

STATE WATER RESOURCES CONTROL BOARD

CONSIDERATION OF A RESOLUTION TO APPROVE THE 2002  
FEDERAL CLEAN WATER ACT SECTION 303(d) list OF  
WATER QUALITY LIMITED SEGMENTS

TUESDAY, FEBRUARY 4, 2003  
1:00 P.M.

JOE SERNA CAL/EPA BUILDING  
SIERRA HEARING ROOM  
SACRAMENTO, CALIFORNIA

ORIGINAL

REPORTED BY:

ESTHER F. SCHWARTZ  
CSR NO. 1564

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APPEARANCES

STATE WATER RESOURCES CONTROL BOARD:

ARTHUR G. BAGGETT, JR., CHAIR  
PETER SILVA  
RICHARD KATZ  
GARY M. CARLTON

STAFF:

CRAIG J. WILSON

COUNSEL:

CRAIG WILSON  
MICHAEL LEVY

INTERESTED PERSONS:

DAVID SMITH  
LINDA SHEEHAN  
SUJATHA JAHUGIRDAR  
RICHARD WATSON

REGION 9:

JIMMY SMITH  
MARY JANE FOLEY  
LARRY MCKENNEY

REGION 5:

JIM WELLS  
BILL JENNINGS  
ALAN CANDLISH  
STEVE CHEDESTER  
DAVID CORY  
JOE KARKOSKI  
PETER MCGAW

REGION 6:

SHANA LAZEROW  
SEJAL CHOKSI

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APPEARANCES (CONT.)

REGION 4:

VICKI CONWAY  
JULIE CONBOY  
JON BISHOP  
ADAM ARIKI  
T.J. KIM

REGION 2:

ANJALI JAISWAL  
LESLIE MINTZ  
RODNEY ANDERSON  
ADAM ARIKI

REGION 1:

MARY ETTER  
STERLING MCWHORTER  
SALLY FRENCH  
ALAN LEVINE  
CRAIG BELL  
VIVIAN BOLIN  
DON MCENHILL  
KATHLEEN SULLIVAN  
BERNIE BUSH  
PETER REBAR  
JIM OSTRUWSKI  
DAVID BISCHHELL  
DAVID LELAND

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TUESDAY, FEBRUARY 4, 2003, 1:00 P.M.

SACRAMENTO, CALIFORNIA

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CHAIRMAN BAGGETT: Good afternoon. We have plenty of room down front. You don't have to stand in the back.

Welcome back to the Board meeting of the State Water Resources Control Board for February 4th, 2003. And since we have already been here, we will continue. This is the Board meeting to hear comments and consider adoption of the proposed 303(d) list additions and deletions.

Craig.

MR. C.J. WILSON: Good afternoon. My name is Craig J. Wilson. I am chief of the TMDL listing unit in the Division of Water Quality. The next item before the Board is consideration of a resolution to approve the 2002 Federal Clean Water Act, Section 303(d) list of water quality limited segments. The staff proposal is for the Board to adopt a new 303(d) list with 1,851 segment pollutant combinations and 680 water bodies segments. We are also proposing that the Board approve of the submittal of an enforceable program list, a monitoring list and a TMDL completed list.

The structure of the list is consistent with EPA

1 regulations, consistent with EPA's -- USEPA  
2 interpretation of the regulations and the Clean Water  
3 Act, as well as their guidance to states on developing  
4 the 303(d) list and 305(d) report. This item was  
5 discussed at the Board's November 2002 workshop. Since  
6 the draft was released last October, 130 organizations  
7 and individuals have submitted letters or provided  
8 testimony. We have summarized all the new comments. We  
9 responded to each of those comments and made many  
10 changes to the proposed list.

11 The major changes to the October draft version are  
12 summarized in the change sheet that is in your package.  
13 If you wish, I can go through each of those changes and  
14 describe them to you. You are going to have a lot of  
15 speakers and have a chance to discuss a lot of the  
16 proposals, I'm sure.

17 I would like to take a few minutes now. We have  
18 received about 22 or so letters, and I want to run  
19 through the new comments we received and give some brief  
20 responses to those comments. Comments that have been  
21 proposed that are old comments, I'm not going to respond  
22 to again because they have already been dealt with.

23 First one, first comment letter is from Linda  
24 Sheehan from the Ocean Conservancy. Many of the  
25 comments were sent in previous letters. There are a

1 couple of new comments, however. One related to the  
2 monitoring list and the elimination of SWMP. We have  
3 set up the list to -- when we set it up in October, we  
4 focused on using just the SWMP dollars to fund the  
5 monitoring. Since that time we've received a number of  
6 comments that convinced us that we should, before we  
7 consider using those SWMP dollars and the dollars that  
8 might be available or not available, that we turn to the  
9 regulated community for voluntary efforts or the  
10 Regional Boards can use their 13267 authorities to  
11 require the needed monitoring.

12 I think the regulated community is going to start  
13 stepping forward to address some of the monitoring  
14 needs. One examining in the current proposal is Laguna  
15 De Santa Rosa where a water body on the monitoring list  
16 is going to be funded in a significant way by the City  
17 of Santa Rosa. More about that in a few minutes.

18 Invasive species, we've dealt with that fairly  
19 carefully. There is some new comments on it. However,  
20 TMDLs are quite useful for pollutants that focus on  
21 those kinds of chemicals that dissipate or dilute or  
22 accumulate in the environment. It is another matter for  
23 developing a TMDL for substances that propagate.  
24 Invasive species need to be prevented from entering our  
25 water bodies. TMDLs are an after-the-fact kind of

1 process. There are problems with invasive species. The  
2 TMDL program probably isn't the right way to address  
3 them.

4 Moving to the comments for Region 1, let me go  
5 through all of those. We received a large submittal  
6 from the California Forestry Association. They  
7 complained about our notification process and the fact  
8 that we did not mention that there were changes in the  
9 list, especially related to temperature in North Coast  
10 rivers. There were dozens of changes in our process.  
11 We notified everybody of the availability of our  
12 documents. It was readily presented in those documents.

13 The new information that was submitted by CFA was  
14 not new information for the most part. Most of it was  
15 already in the record and was considered by the Regional  
16 Board and State Board staff. The exception was  
17 monitoring study group meeting minutes which presented  
18 preliminary data of an active project located in the  
19 Central Valley outside of the North Coast region. This  
20 new information contained very little data on the study  
21 or information on the study. For example, there were no  
22 QA data provided or submitted, no numerical data were  
23 presented. Frankly, it was a summary of a meeting.

24 The Hill Slope Monitoring Report presented new  
25 information that was considered, but it focused on the

1 effectiveness of the Forest Practices Rule; it did not  
2 contain an analysis that contained instream monitoring  
3 information that was useful in the listing process. The  
4 Forest Science Project report, quite a large report,  
5 presented information that is already in the record that  
6 we relied on heavily. It showed that the need for  
7 considering site-specific factors in establishing  
8 temperature limits, the geography, the climate, the  
9 aspects of the direction the watershed is placed as well  
10 as canopy, all of those factors affect temperature.

11 Lastly, the last major thing was CFA felt that  
12 their proposal set a single stream temperature standard  
13 for all streams in the North Coast, and that was  
14 inappropriate. I would like to empathize again this  
15 process is not about establishing standards. It is  
16 about how we interpret those standards. The Regional  
17 Board pulled together -- they had their narrative  
18 objective. They compared it to credible information  
19 risk assessments that were applicable in this situation.  
20 And they used the kinds of information from the Forest  
21 Science Project to make this a credible proposal.

22 Based on the information in the record and  
23 considering these comments, I don't recommend any change  
24 to the listings for the North Coast rivers for  
25 temperature.

1           Also related to North Coast temperature  
2 listings, we received a letter from the United States  
3 National Marine Fisheries Service that supports the  
4 listing. They made a nice, brief summary of the data  
5 available and continued their support for these  
6 listings.

7           Community Network for Appropriate Technologies, a  
8 letter of support for the Russian River temperature and  
9 the Laguna De Santa Rosa listing for low DO.

10           Coastal Forest Alliance, this letter focused on  
11 moving the temperature listing from the watch list to  
12 the three 303(d) list. They erred -- it's contrary to  
13 what we are proposing. We are proposing to put these on  
14 the 303(d) list.

15           Another letter of support for the Russian River  
16 temperature listing and Laguna De Santa Rosa DO from  
17 Peter and Joan Vilms.

18           Another letter of support from Veronica Jacobi and  
19 David Gougler supporting the Russian River and other  
20 temperature listings as well as the DO listings for  
21 Laguna De Santa Rosa, and their tentative support for  
22 the listing of Laguna De Santa Rosa on the monitoring  
23 list for nutrients. They definitely want to participate  
24 in that study in a fair and equitable way.

25           The City of Santa Rosa sent a letter supporting the

1 listing for Laguna De Santa Rosa on a monitoring list  
2 for nutrients and continued to commit to funding the  
3 study to this important work.

4 Brenda Adelman also agreed with the other  
5 commenters on supporting the listings as well as the  
6 other listings for Laguna De Santa Rosa. Those are the  
7 comments for Region 1.

8 In Region 4 -- there were no comments for Region 2  
9 and 3. Region 4, the City of Whittier sent a letter to  
10 us. It was exactly the same as the letter from the City  
11 of Bellflower. We responded to Bellflower, so there is  
12 no additional responses I need to make.

13 The City of Vernon submitted a letter that is  
14 exactly the same as the letter from the City of Signal  
15 Hill. We responded on the record to those comments. I  
16 don't have anything further to say.

17 We received a letter from a councilperson from the  
18 City of Compton and a number of high school students on  
19 trash in Compton Creek. They submitted a video,  
20 brochures, volunteer cleanup values, the number of  
21 pounds of trash picked out of that creek. I still can't  
22 tell if there is a specific problem that is related to  
23 trash in that creek. I saw both clean conditions and  
24 very, very dirty conditions in that water body.

25 Notwithstanding that statement, this creek, I've

1     been told by the Regional Board staff, is covered by the  
2     L.A. River TMDL. And their intention is to address the  
3     problems with trash in Compton Creek under that TMDL.  
4     So I don't recommend any additions to the TMDLs based on  
5     this letter.

6             We received a letter from Heal the Bay. Many of  
7     the comments were repeated from previous correspondence.  
8     One portion of the letter is new, and that is related to  
9     our review of the bacterial data. I've been working  
10    with a team of scientists from SCCWRP, public health  
11    departments in Southern California, Heal the Bay,  
12    Regional Boards on developing a proposal to you for this  
13    policy that is coming up soon. That effort was going so  
14    well, we thought it was appropriate to use the concepts  
15    that were coming out of that. There are disagreements  
16    over those concepts.

17            Factually, I presented what we did in the proposal  
18    to that group. There were no complaints to me about  
19    that. We moved forward with reevaluating those data.  
20    And so I feel very confident that we have done an  
21    adequate job on that. There's been no other comments  
22    from the Regional Boards or public health people about  
23    how we are not doing that appropriately. There is  
24    definitely some disagreements about the policy direction  
25    and the stringency of this, and we need to face those.

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25    and the stringency of this, and we need to face those.

1 But I think we face those under the development of a  
2 policy.

3 The City of Los Angeles. Many old comments were --  
4 this was the County of Los Angeles, Department of Public  
5 Works. They submitted all of their previous comments  
6 and about half of the data that they submitted to us is  
7 new information. I received it late last week. There  
8 was not time to review the information. We just made a  
9 decision that there was so much new information provided  
10 by so many people, that based on the record that we have  
11 up to December 6 when the record closed, we are not  
12 reviewing any additional information.

13 But one point that they presented last time that I  
14 think needs to be addressed one more time is they  
15 maintained that the State Regional Board should only use  
16 acute criteria when evaluating water quality in  
17 concrete-like channels.

18 I'm not given a license to pick which standards  
19 apply. The California Toxics Rule lays out which  
20 standards apply, and it is both the chronic and the  
21 acute. And that is what we did. That is foundation for  
22 our proposal.

23 The City of Burbank. This is another example where  
24 additional data were submitted after December 6th.  
25 There is a lot of information. We did not have the

1 ability to review that information. This is the kind of  
2 information that can be reviewed in the next go-around  
3 which might be sooner than later. I am sure we will  
4 talk about that more as we move forward. This was for  
5 the Burbank Western Channel.

6 County Sanitation Districts of Los Angeles County  
7 submitted a letter. L.A. County wins the award for the  
8 most new data submitted, 60 sites, 53,000 records, over  
9 200,000 data points I received Friday morning. I could  
10 not review that data set.

11 The other comments that we received. There is one  
12 additional one. They submitted new information on the  
13 PV shelf in capping activities that are going on there.  
14 This enforceable programs list, we set the bar high on  
15 purpose, because we did not want this to be a safe  
16 harbor so something did not happen. So the waters that  
17 are on that list, we think there is certainty that the  
18 problems will be fixed. For the PV shelf, they are  
19 continuing the planning process. That is what that new  
20 information shows me. It does not rise to the level of  
21 actually implementing a fix for that problem, so we  
22 recommend no change at this point.

23 From Region 6 we received a correspondence from the  
24 Regional Board talking about a reservoir called Tinemaha  
25 and the concentrations of copper in its effluent. It

1 was listed several years ago. There is -- they  
2 submitted data that they just received over the last  
3 couple weeks. Again, I don't have the report; I just  
4 have the table of data. I don't know anything about the  
5 quality. It is another circumstance where it is  
6 difficult to review this listing.

7 For Region 5, for the Turlock Irrigation District  
8 they request that Harding Drain be removed from the  
9 303(d) list because of a recent order of the State  
10 Board. It was order DWQ 2002-0016. You remanded the  
11 permit to the Turlock Irrigation District to review the  
12 beneficial uses of that water body and come back with a  
13 better proposal. I think it is inappropriate to remove  
14 this water at this point because that will second guess  
15 the remand to the Regional Board. This is a low  
16 priority. I know the Regional Board has higher  
17 priorities that they're going to work on over the next  
18 five years. There will be time for the Regional Board  
19 to get back on this, and it will be addressed during the  
20 next listing cycle.

21 Request this morning from Region 5 staff to make  
22 several changes to waters in Region 5 for Marsh Creek  
23 and separating listings for Panoche Creek. Again, I  
24 just have several very brief statements about this. I  
25 don't know the circumstances of it. These are all low

1 waters on their list. I am sure they are not going to  
2 get to it in the next five years. We have time to fix  
3 those along the way.

4 So at this point I don't recommend any changes to  
5 the 303(d) list based on that.

6 Region 8. We have two letters focused on the  
7 Orange County coastline listing for trash. The new  
8 comment is related to our review of the information that  
9 was submitted. The enforceable program, if you will,  
10 that is out there, which is the storm water permit.  
11 Comment is that we approve the storm water permit and  
12 then dismiss the storm water information.

13 This relates to the enforceable programs list. We  
14 set the bar quite high. I think the county is making  
15 fabulous progress in implementing this permit. I also  
16 think that these permits are the way that a TMDL will be  
17 implemented. I could not make a finding based on what I  
18 have in the record that standards will ultimately be  
19 achieved with an MEP-type of approach. Hence, our  
20 recommendation to list this on the 303(d) list.

21 Last comments, there is two, from staff member in  
22 San Diego Region. Regional Board staff do not agree  
23 with listing. Region 9 staff do not agree listing for  
24 the Orange County coastline for trash. I will modify  
25 our staff report to say that. They have several small

1 changes in the area extent of the listing, and I think  
2 those are really quite so minor that I don't think we  
3 need to change those. Estimated area is a voluntary  
4 field. We do not have to submit it to EPA. It is for  
5 the information of the public to get the relative size  
6 of these areas that are impacted. And as the TMDL is  
7 developed, it's almost a certainty that those areas will  
8 change. It is not something locked in concrete.

9 The last comment from Jimmy Smith at the Regional  
10 Board relates to the way we developed our sediment  
11 listing. He suggests using conditions like toxicity and  
12 benthic community analysis to list and then do studies  
13 to identify the pollutant. Do the TIEs first, if you  
14 will, the toxicity identification evaluation.

15 Our approach has been to identify the pollutants  
16 for sediments specifically. We use the process that was  
17 invented in the late '90s and used extensively during  
18 the Bay Protection Program. We worked extensively with  
19 the staff from NOAA in developing our approach. It was  
20 quite defensible. Continues to be quite defensible.  
21 And it boils down to a policy call. Do you want to do  
22 the evaluation of these sites before the listings so we  
23 can move right into the TMDL phase or list them and do  
24 more studies along the way and take a long time to  
25 develop the TMDLs.

1           Our approach has been to get the information lined  
2 up, list them and move as quickly as possible to  
3 completion of those TMDLs.

4           That concludes my presentation. I am sure you will  
5 have questions now and maybe along the way. My staff is  
6 here and there is a few Regional Board staff here that  
7 supported these -- that developed these recommendations  
8 and we would be happy to answer any questions that you  
9 have.

10           CHAIRMAN BAGGETT: I have a couple, maybe  
11 worth commenting on before we start hearing from  
12 everyone. At least one I am particularly interested in.

13           One is the listing policy guidance that we're  
14 working on. Could you maybe for everyone else's  
15 clarification give us an idea of the timeline of that  
16 policy that is going to drive our next set of listings?

17           MR. C.J. WILSON: Well, the Water Code calls  
18 for the Board to prepare the policy by July 1st of '03  
19 and for approval of that policy by January 1st of '04.  
20 My staff are on track right now to develop the  
21 documentation for that. We have solicited feedback from  
22 the environmental communities, the regulated community,  
23 the PAG, the Regional Boards, USEPA. We have a sense of  
24 the scope and the general direction we need to go. The  
25 challenge now is to prepare a document by July, have it

1 out there in the streets in anticipation of a hearing  
2 late summer, early fall.

3 CHAIRMAN BAGGETT: I guess I would encourage,  
4 although it is not the purpose of today's hearing, the  
5 people to really get involved in that process because  
6 that will, I think, put together -- make this process go  
7 much smoother next time and certainly provide the  
8 guidance. I have an enforcement program list and that  
9 is relevant today. There have been quite a few comments  
10 from a number of people about it. It is something that  
11 we have supported, that it should be a high bar. I  
12 think we put it pretty high. But that it has to be a  
13 program with some specific timeline that is enforceable,  
14 not just a timeline, but an enforceable timeline, one.

15 Two, there has to be real dollars attached, not  
16 maybe if the budget passes, we are going to get this  
17 grant. Those are the two main criteria. The action to  
18 give is going to be in our listing guidance, to make  
19 that program tight, and I think it is probably safe --  
20 well, we hope it is safe to say. We anticipate no  
21 significant changes in this Board by the time that is  
22 adopted except for the addition, hopefully, of one other  
23 additional member.

24 So something we are all familiar with and  
25 anticipate some constructive comments in that policy. I

1 only have two other comments that I think people are  
2 looking at today. That is one, the listing policy.  
3 Third is the monitoring list. And I know there is a lot  
4 of comments about the SWMP and budgets. For one, the  
5 budget is not done. We have a proposed budget out  
6 there, and if anybody here thinks they can anticipate  
7 what is going to come out across the street, I would  
8 love to hear it.

9 Two, the monitoring list was meant to be high  
10 priority. These are areas where we think we might have  
11 problems. There is certainly not enough evidence to go  
12 through the time and money, for those of you who were  
13 here this morning, as how much time and money it takes  
14 to develop a TMDL from not just our staff time but the  
15 discharger's point of view.

16 That is the intent of that list, to make sure we  
17 are doing things that are real and have a significant  
18 impact first and we will get to the other ones when we  
19 get to them. We can't do everything at once.

20 Do you have any comments, things you particularly  
21 are interested in hearing?

22 MR. C.J. WILSON: Thank you.

23 CHAIRMAN BAGGETT: With that, what we will do,  
24 we always start with one down, we will go with nine up.  
25 Try to order the cards where we think people align

1 themselves by the region so we can have some -- while we  
2 are thinking of one part of the state, we can kind of  
3 keep on that track. It is hard to jump from Mattole to  
4 the New River back to Lake Tahoe and then go over to San  
5 Francisco. We try to keep it in some order.

6 For the first part I have Dave Smith, USEPA. We  
7 are going to limit to five minutes. We've got volumes  
8 of information. I spent two days, Pete spent two days  
9 in hearings last spring. These are not issues -- and  
10 Gary spent a lot of time reading documents reviewing.  
11 So if you can keep your comments to the changes and try  
12 to hit the key points. We won't be shy about asking  
13 questions.

14 MR. D. SMITH: I'll do that. I am David Smith,  
15 EPA Region 9. I am the TMDL team leader. And I will  
16 keep it to five minutes or less.

17 I just handed you a crib sheet that I am using to  
18 talk. There are a few specific waters that EPA may need  
19 to add to the list. I wanted to give you a little  
20 information about the ones we are looking at. I am not  
21 going to go over those individually today.

22 Most important thing that I want to note is that  
23 after an extraordinary effort by the Regional Boards and  
24 State Board staff we are nearly in agreement with the  
25 state on this list. We think it is ready for decision.

1 I particularly want to commend Craig and his staff for  
2 an extraordinary effort. California wins the award this  
3 year for the largest record for a TMDL listing -- for a  
4 listed decision by far in the country. And it is really  
5 an extraordinary effort. I guess that is good.

6 At any rate, we are in agreement on at least 99.9  
7 percent of the assessment. Although there are a few  
8 waters where we don't see the record the same way, we  
9 want to extenuate the positive and encourage you to go  
10 forward and make a decision today. You do see the short  
11 list of waters some for which we believe the record is  
12 sufficient to support a listing and a few where we are  
13 not sure. There is enough in the record that suggests  
14 to us that the listing may be required. We are going to  
15 have to do a little bit additional work to look at the  
16 underlying record and find out the right story. It is  
17 possible that there are a couple of other waters that  
18 are not on the short list that we'll also have to look  
19 at based on the final record that is prepared and maybe  
20 considering some of the stuff that recently came in to  
21 you.

22 In general, the way we work this with states are we  
23 give the state one more opportunity to provide so-called  
24 good cause for not listing specific waters. The state's  
25 discretion whether you want to provide that additional

1 analysis. I have spent a lot of time looking at your  
2 files here at the State Board, and we are generally very  
3 comfortable with the decisions that are being made here  
4 after being not that comfortable in the beginning.

5 So we feel it is important to proceed now and not  
6 further delay this. We are already four months late on  
7 this list. As you will see later, we have another list  
8 coming up very soon. It is time to turn to that, turn  
9 to completion of this listing policy and look forward.

10 We agree with what I think Craig was saying is that  
11 it is unrealistic to expect the State Board to consider  
12 huge volumes of data submitted at the eleventh hour or  
13 eleventh and a half hour in this case. And it is  
14 appropriate to consider that at the next listing cycle,  
15 which will begin virtually immediately.

16 On a slightly different take, a big part of your  
17 decision today is as part of this list you target the  
18 waters for which you're developing TMDLs over the next  
19 two years. I want to emphasize how important that is.  
20 In some ways that is the most important decision you are  
21 making today. It is a big list before; it is going to  
22 be a big list after you decide it, even if you fine-tune  
23 it. But importantly, I think the state has done a more  
24 thoughtful job of figuring out which TMDLs can be done,  
25 taken to Regional Boards over the next two years. And

1 we think that is a significant and important commitment  
2 and those schedules do need to be met. So we will be  
3 looking to you to support that and urge your  
4 counterparts at the Regional Boards to move forward in  
5 accordance with those schedules.

6 We are using that as the basis for the work  
7 planning for the next two years in the TMDL program. I  
8 think in most, if not in all, the Regional Boards this  
9 will work. We just don't have room to depart from those  
10 kind of schedules right after you folks have adopted  
11 those schedules as part of your decision.

12 You talked a little bit about this dilemma that the  
13 monitoring list provides in light of the uncertain  
14 budget situation. Perhaps it's obvious, but the  
15 credibility of adopting a monitoring list would be in  
16 question if you don't find a way to monitor them. We  
17 are already working at staff level to try to find a way  
18 to earmark more money for monitoring, including  
19 monitoring waters on this monitoring list as well as  
20 some of the other kinds of monitoring that are also  
21 important for other programmatic reasons. We are aware  
22 of the difficult situation that the state is in here.  
23 But we really hope the state does find a way to  
24 monitoring these waters pretty quickly and to show the  
25 validity of that approach as a way to deal with

1 uncertain situations.

2 We do believe, perhaps in contract with some of the  
3 commenters, that the use of a monitoring list is  
4 consistent with the federal requirements. Use of  
5 enforceable programs list is consistent with federal  
6 requirements. And we think the state has made judicious  
7 use of it in this go-around. We think the structure of  
8 what you have before you is consistent with our  
9 requirements.

10 Finally, there seems to be some confusion about  
11 when the next list is due. And I hate to be the bearer  
12 of this news, but the Assistant Administrator for water  
13 has decided that we are not going to revisit the  
14 existing requirement that a list be submitted in April  
15 of 2004. And I really hate to be bearer of this news in  
16 light of -- let's put it this way: It is going to be a  
17 challenge for us all.

18 We are already talking to your staff about options  
19 for dealing with this extraordinary situation.  
20 Hopefully, we can find a way to streamline this process.  
21 I don't think we have a choice to not streamline it in  
22 some way. It's going to create a very awkward situation  
23 in terms of how it fits with the listing policy. We  
24 don't expect anything to get decided today. I just  
25 wanted you be to aware of at least what I have been told

1 by my headquarters counterpart is that we do need to do  
2 this, to find a way to do it with the least cumulative  
3 pain and hopefully in a way that can add some value.

4 CHAIRMAN BAGGETT: Well, whoever needs to know  
5 this, I think until we have a policy developed I am not  
6 comfortable spending the time doing a whole other list.  
7 Whatever has to happen next April, can happen. If we  
8 are going to meet an April deadline we have to start in  
9 two weeks. We haven't even finished this one. I am not  
10 about to put our staff through that kind of work, and I  
11 don't think my colleagues are either, when we are just  
12 barely finishing this round or the public or the NGOs.  
13 It takes all of everybody in this room a lot of time and  
14 money to do this.

15 MR. D. SMITH: I know.

16 CHAIRMAN BAGGETT: You can pass it on. It's  
17 going to be a while.

18 MR. D. SMITH: Let's put it to you this way:  
19 We've already started having discussions with Celeste  
20 and staff about what options there are. There is no  
21 great option there.

22 CHAIRMAN BAGGETT: Don't expect it by April of  
23 2004.

24 MR. D. SMITH: Schedules are schedules, and we  
25 know how those work.

1           CHAIRMAN BAGGETT: Maybe you can adjust your  
2 workload is what I guess I am saying to Region 9. You  
3 might want to think about your workload at this point,  
4 too.

5           MR. D. SMITH: We also want to make the point  
6 that we hope the state doesn't take lightly the idea of  
7 expecting EPA to do this because from a policy  
8 standpoint, political standpoint, we believe there is  
9 some severe downsides to that. And I am hopeful we can  
10 find a way, perhaps by providing contractor assistance,  
11 staffing assistance and things like that that we can  
12 find a way to move through this in a somewhat  
13 streamlined manner and either meet that deadline or get  
14 very close to it without putting EPA completely in the  
15 driver's seat on this.

16           CHAIRMAN BAGGETT: It takes our time, not just  
17 staff time, it's Board time. We've got hearings  
18 scheduled for myself for the next nine months, a  
19 staggering number. We have NOI hearings. It looks like  
20 we have a number of those scheduled for Phase II storm  
21 water. We have a hundred days of hearings next year.

22           MR. D. SMITH: That would be full-time  
23 hearings.

24           CHAIRMAN BAGGETT: Yes.

25           MR. D. SMITH: I understand.

1           CHAIRMAN BAGGETT: It is not just that. It is  
2 our time and the priorities we've got. I just don't  
3 want anybody to leave here with some feeling that this  
4 is easily worked out.

5           MR. D. SMITH: I doubt if anybody will go away  
6 with that view. The one thing I would say is several  
7 states expressed concern about this and in a call we had  
8 with the SWPCA the other day. I don't know whether  
9 SWPCA has done anything to try to talk to our more  
10 senior management about it. If you are going to do it,  
11 do it quickly. That is my only request.

12           I do want to add that this project that, I think,  
13 we've all worked on in 2002 did add value in terms of  
14 the quality of the list that is before you and the  
15 degree of documentation supporting it. So we hope you  
16 go forward and adopt it and validate the good work that  
17 was done by everybody involved.

18           CHAIRMAN BAGGETT: Thank you.

19           Let's start down south, then. Jimmy Smith,  
20 Region 9. I think Richard Watson is Region 9.  
21 Region 9.

22           MR. J. SMITH: Good afternoon, Chairman  
23 Baggett and Members of the Board. My name is Jimmy  
24 Smith. I am an environmental scientist down in San  
25 Diego Regional Board. For the past two years I have

1       been working to update our region's 303(d) list and  
2       maybe in the next two years coming up.

3               The comments I present today pertain to two  
4       contaminated sediment sites in San Diego Bay. State  
5       Board staff has proposed that these sites be listed for  
6       individual chemicals that may or may not be the cause of  
7       the impaired conditions.

8               Region 9 disagrees with this and feels we should  
9       not list for chemicals suspected of causing a problem,  
10       but should list for the observed condition of sediment  
11       toxicities and degraded benthic communities. The  
12       evidence for these listings comes from the Bay  
13       Protection Cleanup Program. To merit listing these  
14       sites demonstrated sediment toxicity, degraded benthic  
15       communities and elevated chemical concentrations.

16               For the concentrations to be considered elevated  
17       the chemicals had to be above a sediment quality  
18       guideline, or SQG. These SQGs are derived from national  
19       percentile-based databases. They were not intended as  
20       regulatory criteria or standards. They were not  
21       intended as cleanup or remediation targets nor as  
22       discharge attainment targets.

23               They were intended as informal, nonregulatory  
24       guidelines for use in interpreting chemical data. That  
25       is what the Bay protection folks did. They used these

1 guidelines to interpret chemical data and to target  
2 sites for further assessment. Therefore, to use  
3 exceedance of these guidelines to place these chemicals  
4 on a 303(d) list is not appropriate because it does not  
5 provide conclusive evidence that these exceeding  
6 chemicals are the cause of observed conditions.

7         Region 9's 20 plus years of cleaning sediments in  
8 San Diego Bay leads us to believe that it is essential  
9 to identify the causative agents before issuing cleanup.  
10 At these sites it is probable that many pollutants are  
11 causing contamination and there could be chemicals that  
12 are below the guidelines but are still causing a danger  
13 to the environment.

14         A toxicity identification evaluation should be the  
15 first course of action to deduce which chemicals are  
16 responsible, and until this is completed the listing  
17 should not be for individual chemicals, but should be  
18 for the impaired conditions.

19                     (Member Katz enters.)

20         MR. J. SMITH: To continue with the list as  
21 currently drafted has a potential to waste resources  
22 addressing a chemical that may not be the cause of the  
23 problem and could delay the restoration of beneficial  
24 uses because the actual cause of the problem has not  
25 been addressed.

1 I ask that you consider changing the listing for  
2 San Diego Bay shoreline near Switzer Creek and San Diego  
3 shoreline between Sampson and 28th Street to sediment  
4 toxicity and benthic community effects. This would be  
5 consistent with other San Diego Bay sites that were  
6 listed in 1998 and were based upon the same Bay  
7 Protection data. Furthermore, to list for impaired  
8 conditions would be fully consistent with the Clean  
9 Water Act as has been outlined in a memo from the State  
10 Board office of Chief Counsel.

11 Thank you for hearing my testimony and for  
12 considering this change.

13 CHAIRMAN BAGGETT: Have any questions?

14 MEMBER SILVA: I guess of Craig. Assuming --  
15 is there any issue for changing the way it is listed?

16 MR. C.J. WILSON: The way we proposed the  
17 listing this time around was we went after the -- if we  
18 could find the pollutants in the water bodies, we went  
19 after those because you have the greatest possibility of  
20 developing a successful TMDL when you identify those  
21 pollutants. The approach we took, just like Jimmy said,  
22 was to use these NOAA guidelines. We worked with Ed  
23 Long, who developed those guidelines, over a ten-year  
24 period, used those guidelines correctly.

25 Jimmy said that the Bay Protection Program was just

1           They are waiting for the State Board to act on this  
2 list to straighten out that list, to focus on those  
3 pollutants so they can finish that TMDL. I want to  
4 avoid those kind of problems. That is the whole reason  
5 for the proposal.

6           MEMBER CARLTON: Just as a follow-up, Craig.  
7 The criteria that you are using, then, to list these  
8 specific chemicals is a guidance criteria?

9           MR. C.J. WILSON: That's correct.

10          MEMBER CARLTON: As opposed to a water quality  
11 objective or water standard. Is that approach used  
12 frequently throughout the listing process?

13          MR. C.J. WILSON: Yes, it is used by virtually  
14 all of the Regional Boards. There is a number of  
15 narrative water quality objectives, things like no  
16 toxics in toxic amounts or no bioaccumulation of toxic  
17 to levels that will impact beneficial uses. To  
18 interrupt that we have gone out and tried to find the  
19 best combination of guidelines to use. For sediment  
20 quality we insist on using these ERMs, if you will, or  
21 PEIs, which is a different kind of factor. But it has  
22 to be in association with toxicity or benthic community  
23 impacts. I don't contend that there is a problem with  
24 the benthos or the toxicity. It is just which of the  
25 pollutants that we think are adding to that problem.

1                   MEMBER CARLTON: Why do we not list for  
2 toxicity then instead of the specific chemical?

3                   MR. C.J. WILSON: We did not list for toxicity  
4 because we thought we had the pollutants to focus on for  
5 the TMDL.

6                   MEMBER CARLTON: And the Regional Board's  
7 concerned that we may not.

8                   MR. C.J. WILSON: There is always that  
9 possibility. But for this kind of problem in sediments  
10 if you get at those chemicals, you are going to catch a  
11 lot more than just those chemicals.

12                   MEMBER SILVA: We can always add them in  
13 April, too. I didn't say what year.

14                   CHAIRMAN BAGGETT: Larry McKenney, County of  
15 Orange, and Mary Jane Foley, County of Orange. In that  
16 order?

17                   MS. FOLEY: Mr. Chairman, Board Members.  
18 First I want to praise Craig for doing -- Craig Wilson  
19 and his staff -- for doing such a great job and such a  
20 great outreach with all of the people in my communities.  
21 Really appreciated it.

22                   We are here today from the County of Orange. I am  
23 just going to talk briefly about the study used to list  
24 the beaches, now listing the coastline for all of our  
25 beaches in Orange County. And I am a little stunned

1 that the Southern California beaches were just listed  
2 three weeks ago. And I don't think many of the  
3 communities understand it or even have taken the time to  
4 analyze why they're listed.

5 When this happened, I was taken by surprise.  
6 Having had a lot of intimate relationships with the L.A.  
7 trash TMDL and want to know the story, why did it get  
8 listed, where did it come from. Found the study. Spent  
9 a lot of time talking to the director of the study. And  
10 this is how I think the study goes, and I don't think it  
11 has enough validity to list all our beaches.

12 The director that oversaw the study said we wanted  
13 to see if the coastal cleanup days are really giving an  
14 accurate picture of what people were cleaning up. And  
15 so they decided to do a debris study. And they took  
16 certain areas of a beach. I think it was -- I am going  
17 to -- this may be not exactly correct, maybe 23  
18 different locations. Mapped them out like 25 yards.  
19 Did a transect. Picked up trash. Sorted it in to the  
20 kind of things that they found and took a five-gallon  
21 bucket and sieved the trash and found these  
22 preproduction pelletized plastic pellets that are used  
23 to transport raw plastic. 98 percent of the debris  
24 found was that.

25 Then they -- about a week later the Coastal Cleanup

1 Day happened, and there was, like, 50 times less found.  
2 Then they wanted to figure out, well, why was there such  
3 a variability. So they took Salt Creek where I live. I  
4 live on Salt Creek, and they took Sunset Beach, and they  
5 did another comparison and the numbers were still very  
6 varied. And as far as I can tell, the whole listing  
7 pretty much focuses around that study. And in a time --  
8 it would be very detrimental to my county and to the  
9 small businesses that exist along the coastline that has  
10 this reputation now.

11 So we do have tremendous enforceable programs  
12 available, well funded. We are not a county that  
13 litigates. We really are dedicated to all these  
14 programs. And Mr. McKenney is going to expand on what  
15 we are doing in the county, and I do think that we have  
16 enough avenues to make this happen, to take care of this  
17 problem. If nothing else if you can just put it on the  
18 monitoring list.

19 CHAIRMAN BAGGETT: Is this storm water that is  
20 running off?

21 MS. FOLEY: They say it's air deposition,  
22 urban runoff. I don't know the other two things. Larry  
23 will have to tell you. Boating, tourist actions on the  
24 beach. And I don't even think there is water quality  
25 standards for the coastline. I mean, I knew there

1 wasn't for sand. The whole thing needs, I think, more  
2 thoughtful approach to a very Draconian thing to list 40  
3 miles of beaches in Orange County. I would let Larry  
4 tell you more specifically and thanks for the  
5 opportunity of listening to me. You know I am pretty  
6 concerned about this.

7 Thank you.

8 MR. MCKENNEY: Good afternoon. I am Larry  
9 McKenney from the County of Orange. Thanks for the  
10 opportunity to speak. I echo Mary Jane's praise of your  
11 staff. They have done gargantuan labor on this. There  
12 are many issues that we worked with them very  
13 productively on this, and I thank them for that and you  
14 for that.

15 The one issue that we are still concerned about  
16 is the trash listing. I am going to talk a little bit  
17 about why we think the enforceable programs list an  
18 alternative if you believe that any listing action is  
19 warranted, even though we don't think that the study  
20 amounts to appropriate justification for listing.

21 You mentioned it is important or Craig mentioned it  
22 is important that an enforceable program list  
23 justification for the things that are actually being  
24 done, not just studies. We are doing things to address  
25 trash in Orange County under our storm water program and

1 under other programs to the tune of \$62,000,000 this  
2 year under our storm water program for the county and  
3 the 34 cities in the flood control district in the  
4 county to implement our storm water program.

5 The permit, as you know, requires to reduce  
6 pollution to the maximum extent possible. That includes  
7 trash. It permits us to have legal authority to  
8 implement our water quality ordinance. The ordinance  
9 includes prohibition of putting trash in storm drains.  
10 So to the extent that the trash that is making its way  
11 to the ocean is coming from storm drains, it is illegal  
12 now to put trash there. In addition, the cities and  
13 county and the state all have laws against littering in  
14 the public places, in parks, anywhere. And those  
15 ordinances obviously are enforceable.

16 Also under the storm water program we have a number  
17 of BMPs in which we investing very heavily. I will just  
18 list a few. They are obviously relevant to trash and  
19 which we are increasing year by year. We are doing  
20 increased street sweeping. We are constructing catch  
21 basins for new development. We are adding inserts into  
22 storm drains and maintaining the storm drains and storm  
23 drain inserts better. We are doing doing more  
24 maintenance in our storm channels. We constructing  
25 debris booms and low flow diversion structures that

1 catch trash on many of our channels. Most importantly  
2 we have a major program aimed at education. That is  
3 important -- it is important to us to the tune of about  
4 \$800,000 a year right now in education, and it is  
5 important for the trash issue because of the four  
6 potential sources that are listed. Only education is  
7 really going to reach all of those sources. There is  
8 only so much the municipality can do directly about  
9 sources like ship discharges or aerial deposition.

10 So it is a regional problem, and we are trying to  
11 have a regional education program and we are investing  
12 heavily in that. Without admitting at this point that  
13 the county is responsible for whatever trash may come  
14 from aerial deposition or discharge from boats, I will  
15 commit to you today that our storm water education  
16 program will target all four of the potential sources  
17 that are listed in the proposed listing, whether or not  
18 there is any listing decision. We will target those  
19 sources. We see trash as a problem. We disagree that  
20 it is a problem that warrants this type of listing  
21 action right now, but it is something that we are going  
22 to take action on whether or not we are the source of  
23 the trash. Finally, I want to mention timeline  
24 because that was another element of the enforceable  
25 program with a question. I understand that the

1 requirement for the timeline is that there be a high  
2 likelihood of success of the program within a reasonable  
3 time. If we look at, for example, L.A. and the trash  
4 TMDL, you might conclude that 14 years is an adequate  
5 timeline to show results. During that time you have  
6 seven revisitations of the list, and if you are not  
7 showing progress I suppose you can take a listing action  
8 at that point. We think there is a likelihood within a  
9 reasonable time that we will show significant  
10 improvement on trash in Orange County.

11 Thank you for your time.

12 CHAIRMAN BAGGETT: Thank you.

13 Any questions?

14 Probably Craig.

15 I guess, one, I am not enamored of putting this on  
16 an enforcement program. I think it kind of flies in the  
17 face of what, I think, we are trying to do with specific  
18 timelines and committed dollars and something that will  
19 actually deal with the issue.

20 I do have a question, why do we have another trash  
21 TMDL?

22 MR. C.J. WILSON: We had a number of requests  
23 from people to list waters for trash. The information  
24 that was provided to us tended to be one or two  
25 pictures, some beach cleanup data. We went through all

1 of those listings very carefully. This particular  
2 proposal was backed by probably the best scientific  
3 study that I know of. Maybe there's others. It was  
4 unequivocal, done by a good organization people respect  
5 with good information.

6 It was very difficult for us to say it wasn't  
7 representative of the coastline because of the way it  
8 was developed. Temporally it was done at one time.  
9 It's probably not temporally representative. But I have  
10 nothing else to base it on. We have a sense there is  
11 trash coming down through some of the waters in the  
12 region. San Gabriel River, we have photographs from  
13 that. Santa Ana River, we have photographs from that.  
14 Newport Bay, there is pictures of that. So it is clear  
15 it is coming down and potentially ending up on these  
16 beaches, and that is where the recommendation came from.

17 CHAIRMAN BAGGETT: My concern, we can list  
18 almost every river in the state for trash if we wanted  
19 to. You can list the Merced River a mile from my house  
20 in the summer if you wanted to. Yosemite Valley, you  
21 should list. There is a lot of trash in Yosemite  
22 Valley. I don't know.

23 MEMBER CARLTON: Craig, one more question.  
24 Mary Jane referenced some follow-up studies or surveys  
25 that were done on the beaches which found a

1 substantially lesser amount of trash.

2 MR. C.J. WILSON: I am not familiar with the  
3 follow-up study. I am familiar with the published  
4 work.

5 MEMBER CARLTON: That is my question. You  
6 didn't receive those or review them or analyze those?

7 MR. C.J. WILSON: No.

8 MEMBER CARLTON: Thank you.

9 CHAIRMAN BAGGETT: Jim Wells, we've got you  
10 down here for eight and nine; is that accurate?

11 Region 6, okay.

12 Nobody is here from seven.

13 MR. WELLS: Region 5, I'm sorry.

14 CHAIRMAN BAGGETT: We are up to Region 5, I'm  
15 sorry.

16 MR. WELLS: Chairman, Members, I am Jim Wells.  
17 I am with a consultant firm called Exponet. I am here  
18 to represent Makhteshim-Agan of North America,  
19 Incorporated, also known as the parent company  
20 Makhteshim Chemical Works, Limited. I will refer to  
21 them as MANA from now on.

22 MANA is a pesticide manufacturer that holds  
23 registration for both chlorpyrifos and diazinon. MANA  
24 is deeply committed to product stewardship and has  
25 actively participated in the proceedings of this Board

1 with Section 303(d) and impairment designation issues.  
2 MANA has previously submitted comments on the 2002  
3 revisions on both May 14th, 2002, and December 5, 2002.  
4 Today we are submitting a brief letter that lends  
5 further support to MANA's views.

6 As it has in its May and December letters, MANA  
7 again explains that the data underlying the diazinon and  
8 chlorpyrifos impairment designations proposed for the  
9 Central Valley region are antiquated and inadequate.  
10 Let me read you just one portion of the letter to  
11 demonstrate our point, and I will be brief.

12 The Butte Slough impairment listing for diazinon  
13 typifies this error. It is based on just two years of  
14 data taken six years apart. The data is as follows:  
15 Twenty-eight samples were taken in 1994. The highest  
16 diazinon detection was one microgram per liter. Nine  
17 samples were taken in 2000, and there was only one  
18 exceedance. That exceedance was measured at 0.82  
19 micrograms per liters, an order of magnitude less than  
20 the sample collected six years before, and, in fact,  
21 only .002 micrograms per liter over the acute number  
22 that CDFG have established as a trigger of concern,  
23 acute trigger of concern.

24 The Central Valley Board report downplayed these  
25 facts. First, it reported only percentage of samples

1 that exceeded the CDFG criteria, which is misleading,  
2 given the small sample size. Second, it characterized  
3 two sets of measurements as one cumulative set despite  
4 the fact that clusters of samples were taken six years  
5 apart and the later data evidenced far lower diazinon  
6 levels.

7 The practical results of this characterization and  
8 others MANA has identified will be the imposition on  
9 hundreds of growers and farmers of regulatory burdens  
10 that cannot be justified. In light of these  
11 deficiencies MANA believes you should not approve the  
12 proposed report, rather you should send it back to the  
13 staff with directions to undertake further analysis  
14 consistent with our comments, and MANA is fully prepared  
15 to work with staff in this effort.

16 Thank you.

17 CHAIRMAN BAGGETT: Thank you.

18 Bill Jennings on Region 5.

19 MR. JENNINGS: Good afternoon, Chairman  
20 Baggett, Board Members. Bill Jennings representing  
21 DeltaKeeper, California Sportfishing Protection  
22 Alliance.

23 CHAIRMAN BAGGETT: You avoided jury duty.

24 MR. JENNINGS: Maybe.

25 MEMBER KATZ: One day at a time.

1 MR. JENNINGS: One day at a time.

2 I would like to express our appreciation for Craig  
3 Wilson and his staff for the cheerful good humor and  
4 helpful assistance throughout this process. It's been  
5 greatly appreciated. We also appreciate staff  
6 acceptance of most of our recommendations and their  
7 incorporation into the update. So I will briefly focus  
8 our remaining -- on our remaining areas of disagreement.

9 I incorporate by reference our previous comments on  
10 previous drafts and the comments of NRDC, Ocean  
11 Conservancy, Heal the Bay and other CaliforniaKeepers.

12 First, certainly, we respectfully disagree with  
13 your staff on invasive species, pollutant impairment in  
14 the Delta. We have extensively briefed the issue. It  
15 is basically our lawyers disagree with your lawyers, and  
16 we will go from there.

17 Temperature.

18 CHAIRMAN BAGGETT: I guess on that, I can't  
19 just let it go. We talked about this last spring.  
20 Bill, the real result of this is if you follow that  
21 logic we should be listing Lake Davis for pike. We  
22 should be listing all Sierra streams for German brown  
23 trout which is eating everything in the world. And then  
24 we have this bass floating around in the Delta which  
25 Fish and Game introduced, actually.

1           Where do we stop? I guess that's the challenge I  
2 feel. I take just as much offense to squaw fish and the  
3 bass on the Merced where I live because they are eating  
4 all the native trout. Should we try to list that?

5           MR. JENNINGS: But certainly we have to stop  
6 the continuing introduction of the --

7           CHAIRMAN BAGGETT: It's illegal to continue to  
8 introduce. Fish and Game is dealing with --

9           MR. JENNINGS: I think we need a regulatory  
10 approach. A voluntary approach is only going to take us  
11 so far. I think until we begin to address ballast  
12 discharges --

13          CHAIRMAN BAGGETT: Fish and Game catches you  
14 bringing a fish and putting a pike in Lake Davis they  
15 can't -- I think there a lot of statutes out there.

16          MR. JENNINGS: If someone takes and brings  
17 pike or somebody dumps an aquarium and they are caught  
18 doing so.

19          CHAIRMAN BAGGETT: Or ballast water.

20          MR. JENNINGS: Or ballast water. But we don't  
21 have the regulatory process to ensure we are monitoring  
22 and managing that as an adequate level of protection.

23          Temperature. This is probably a standard issue. I  
24 think EPA agrees that Delta 5 is not protective, but  
25 certainly we believe that temperature is probably one of

1 the most limiting factors in the Central Valley. And  
2 the Board has just refused, should I say I brought this  
3 up before Mr. Carlton on many occasions, that we need to  
4 begin to address this problem.

5 CHAIRMAN BAGGETT: I think we are in the water  
6 rights arena.

7 MR. JENNINGS: And, third, PCBs in Smith  
8 Canal, I think studies demonstrate that PCBs in the  
9 canal are both toxic and bioavailable.

10 EC in the Deep Water Channel, I think the NPDES  
11 monitoring data demonstrate that we have exceedances of  
12 both the agricultural water goal and the drinking water  
13 MCL. I do have a question about EC in the South Delta.  
14 If we bifurcated the Delta in the east and west, I am  
15 not sure about whether Old River and Middle River falls  
16 in the eastern or western section. They are certainly  
17 impaired by EC. So I would -- I have concern as to  
18 where that line was drawn. I don't know where that line  
19 was drawn, so I do raise that as a concern.

20 Certainly unknown toxicity in Putah Creek. I think  
21 Region 5 recommended it. I think given the degree of  
22 toxicity that multiple lines of evidence are not  
23 necessary.

24 The monitoring list. I certainly question the  
25 justification for it in light of at least the governor's

1 proposal to essentially eliminate water quality  
2 monitoring by the Water Boards. We shredded the  
3 monitoring; it's going to have a huge impact in many  
4 areas. I think the TMDL completed list is simply bad  
5 policy without justification and illegal. There again  
6 we have a disagreement. And I think the enforcement  
7 program is bad policy, illegal, and I think it lacks  
8 support in the record.

9 With the exception of legacy pollutants, most  
10 impairments exist because of a breakdown or a failure to  
11 implement or enforce existing laws. And frankly, I  
12 don't see the mass conversions out there that suddenly  
13 these laws are going to be brought to bear on many of  
14 these problems. With that --

15 CHAIRMAN BAGGETT: Did not -- we removed the  
16 very programs you had some concerns about in the Delta  
17 with the toxicity hot spots. There was program but no  
18 program.

19 MR. JENNINGS: I greatly appreciate that  
20 removal.

21 CHAIRMAN BAGGETT: We tried to limit where  
22 there was, like I said, where there was funds and there  
23 was a real enforceable time order, so we can avoid  
24 duplication and the fact that the time order is complied  
25 with and the money is spent, there shouldn't be in 12 or

1 18 months. If there is, why go to a listing and all the  
2 courts and hearings. That is the intent. I think we  
3 did take out. I know you had strong concerns.

4 MR. JENNINGS: Certainly we are going to see  
5 the new bay protection pesticide cleanup plans coming  
6 down the road shortly. They are going back to the  
7 Regional Board for another take at it.

8 But anyway, thank you very, very, very much.

9 CHAIRMAN BAGGETT: Question?

10 MEMBER CARLTON: Bill, question. Your issue  
11 on the East and West Delta, is that, in your concern,  
12 whether Old River is caught --

13 MR. JENNINGS: Old and Middle River, I am  
14 looking at the levels down there, and they've always  
15 been, I think, high and considered to be impaired. And  
16 the western Delta is listed as impaired. You have not  
17 listed the eastern Delta as impaired, and I just don't  
18 quite know where that line is and I've inquired of your  
19 staff. And I think the first person on your staff that  
20 knows where the line is drawn is not here.

21 CHAIRMAN BAGGETT: Linda Sheehan followed by  
22 Alan Candlish from U.S. Bureau.

23 MS. SHEEHAN: Good afternoon. My name is  
24 Linda Sheehan, and I am the director of the Pacific  
25 regional office of the Ocean Conservancy. I would like

1 to echo again the amount of time, thanks for the amount  
2 of time Craig and Laura, also, and the rest of the staff  
3 put into this. It's really a lot of work, and I do  
4 appreciate the waters that were listed, particularly  
5 those along the Central Coast which are of particular  
6 importance to our organization.

7 We have submitted extensive written comments. We  
8 testified at the last hearing, so I won't go into all of  
9 the things that you know that we have concerns about. I  
10 would like to just point out four things that came up  
11 from the responses to comments that I would like to  
12 emphasize, and those are in the letter I submitted on  
13 the January draft. I will just highlight those quickly.

14 First, with respect to the enforceable programs  
15 listed and the TMDLs completed list, Dave made a point  
16 that these are consistent with federal requirements.  
17 And it is still our position that is inconsistent with  
18 the federal law, with the statute itself. So we could  
19 disagree with a broad reading with the word  
20 "requirements." We would ask if you do decide that you  
21 are going to go ahead with a separate list for these  
22 particular waters that you actually flip the burden of  
23 proof and put them -- keep them on the 303(d) list, but  
24 put them low priority. So everybody knows that they are  
25 not going to get touched until April of 2004, but

1 probably longer than that. That way you would ensure  
2 that if these programs are with a certainty going to  
3 work, as Craig described them, then we will know by then  
4 whether they are actually going to work or not. So I  
5 ask that you consider seriously doing that before you  
6 make your decision today.

7 Second, we still are concerned about the monitoring  
8 list. Whether or not the governor's budget goes  
9 forward, there is still a severe budget crisis and  
10 monitoring list is somewhat suspect if there isn't money  
11 for monitoring. I disagree, and we said this before,  
12 that the monitoring list should be the highest priority  
13 for funding for monitoring. I think the Regional Boards  
14 should be able to decide what their highest priorities  
15 are, and some of the waters on the monitoring list  
16 aren't there because of data issues. They are there  
17 because of political or other concerns, and we are  
18 concerned that the monitoring list should be used  
19 appropriately, which means, I think, not at all. I  
20 don't think we need it. If there is not enough data to  
21 go on the -- it just gets redacted. There can be fact  
22 sheets to support that.

23 Multiple lists, as I pointed out in this letter,  
24 create administrative nightmares. Staff have enough to  
25 do; they are overloaded. We spent time going through

1 these lists and found at least seven, and there is  
2 probably more, water body pollutant combinations that  
3 were taken off the '98 list and showed up on the  
4 monitoring list, but not the deleted list. So if Joe  
5 Smith was looking for a particular water body, and they  
6 looked on the deleted list and said, "Oh, my creek is  
7 not there, great, it's still on the list," they wouldn't  
8 know that it had been taken off unless they went to the  
9 312 water bodies on the monitoring list and perhaps the  
10 other list as well. It just creates a lot of headaches.  
11 I don't think that we need to do that. I think we  
12 should just let the Regional Boards make their decision  
13 on monitoring priorities.

14 Third, we still disagree with their list of  
15 endangered species. Their response to comments said  
16 that they weren't going to list because they weren't  
17 pollutants. We hold the position, which I tried to  
18 explain further in our letter, that under the Clean  
19 Water Act there is a dichotomy between listing which  
20 MD(1)(a) says if it's impaired and MD(1)(b) says that you  
21 create the load if it is a pollutant. We don't even  
22 think that the pollutant issue gets to the table until  
23 you actually develop the load and in that case we go to  
24 the pollutant. That seems to be a disagreement that we  
25 can put off for now.

1           We can still list those water bodies and meet the  
2 five, eight, nine that are, in fact, impaired and there  
3 wasn't a disagreement on that.

4           I just wanted to respond to Craig who said that  
5 TMDLs aren't appropriate for substances that propagate.  
6 We do that all the time for bacteria and pathogens here  
7 in California. Those are biological substances that are  
8 invasive species. They probably were invasive and came  
9 over here in shellfish or ballast water or whatever  
10 source they might have come in. So I don't think that  
11 is an accurate depiction. I do think TMDLs are a  
12 perfectly appropriate tool if we actually try to prevent  
13 an invasive species from coming in. We may be able to  
14 let nature take its course if we stop reinoculating our  
15 waters and maybe it will just fix that problem.

16           Finally, with respect to listing guidance we do ask  
17 that you don't necessarily rely on the policy provisions  
18 developed for the 2002 list. We'd rather avoid some of  
19 these positions becoming a baseline. And Craig  
20 mentioned in comments that the Regional Boards were  
21 given the opportunity to review the draft listing  
22 documents, and I am assuming they created some comments,  
23 and I would very much appreciate that those were made  
24 available on the website. I think that would be helpful  
25 with all of us going through the documents. And that is

1 it.

2 CHAIRMAN BAGGETT: Thank you.

3 Alan Candlish and Steve Chedestér.

4 MR. CANDLISH: Chairman Baggett, Members of  
5 the Board, my name is Al Candlish. I am the regional  
6 planning officer for the Bureau of Reclamation here in  
7 Sacramento in the Mid Pacific region. I want to thank  
8 you for the opportunity to address the Board.

9 Bureau of Reclamation respectfully requests the  
10 Board to not adopt at this time the proposed actions to  
11 include the Delta Mendota Canal in the revisions to the  
12 1998 Clean Water Act 303(d) listing for water quality in  
13 limited segments. This request is based upon two  
14 factors. Number one, Reclamation does not believe that  
15 the Delta Mendota Canal is an appropriate water body for  
16 listing under Section 303(d). We are unclear about why  
17 the inclusion of a water conveyance facility, such as  
18 the Delta Mendota Canal, is considered eligible under  
19 the Clean Water Act for listing.

20 Now if you further go along with the assumption  
21 that the DMC is an appropriate water body for listing,  
22 we question the assessment of the data used in the staff  
23 report since it was based on grab sample data; that is,  
24 single observations per month. Whereas, operations of  
25 hydrologic conditions can often affect water quality on

1 a daily basis. Furthermore, the state criterion is for  
2 a four-day running average.

3 To fully understand the water quality conditions of  
4 the Delta Mendota Canal Reclamation has recently  
5 augmented its long-standing water quality monitoring  
6 program for the Delta Mendota Canal to accurately  
7 evaluate the water quality conditions of the canal. The  
8 latest water quality monitoring program provides the  
9 necessary data to accurately assess water quality  
10 conditions in the canal. Reclamation will continue to  
11 provide this data to the Board, to the Regional Board  
12 and the State Board, in order to ensure the decision of  
13 adding the canal to the Clean Water Act list is base  
14 line, accurate assessment and complete data.

15 Therefore, consistent with the recommendations of  
16 the USEPA's 2002 Integrated Water Quality Monitoring  
17 Assessment Report Guidance Document, Section A,  
18 Reclamation believes that the Delta Mendota Canal is a  
19 water body with insufficient data which is better suited  
20 to be listed in the State Water Resources Control  
21 Board's monitoring list.

22 That concludes my comments. We submitted similar  
23 comments in a letter to the Board. I do have staff here  
24 if you have any questions.

25 CHAIRMAN BAGGETT: Are you proposing a listing

1 for selenium is inappropriate?

2 MR. CLANDISH: We don't believe there is  
3 sufficient data.

4 CHAIRMAN BAGGETT: Thank you.

5 Steve Chedester. David Cory if necessary.

6 MR. CHEDESTER: Good afternoon, Chairman  
7 Baggett, Board Members. My name is Steve CHEDESTER. I  
8 am the Executive Director of the San Joaquin River  
9 Contractors Water Authority.

10 A little bit of history to give you a reason why we  
11 are commenting. The Exchange Contractors take water off  
12 the Delta Mendota Canal, especially at the Mendota Pool.  
13 We take about 840,000 acre-feet annually from the  
14 Mendota Pool in the Delta Mendota Canal, so, therefore,  
15 water quality is of great concern for us. We also wheel  
16 probably upwards of 200,000 acre-feet of wildlife water  
17 to the local refuges. So coming through our system is a  
18 million acre-feet.

19 The Exchange Contractors commented on the proposed  
20 TMDL 303(d) listing in prior sessions earlier last year.  
21 However, in October we did not get the list at all.  
22 Also, we didn't even -- were aware of the modifications  
23 to the 303(d) list; that is listing the Delta Mendota  
24 Canal for selenium as water quality impaired until the  
25 day of my board meeting which was around, I think, the

1 first week in December. We had one day to respond  
2 before the close of comments. We had commented prior,  
3 but we did not comment in October, so, therefore, I  
4 guess is the way it worked, we weren't notified because  
5 we didn't comment on the original list. Because when we  
6 read through it, the Delta Mendota Canal was not listed  
7 for selenium in the lower part.

8 Taking a look at the data that I've reviewed, it  
9 doesn't appear to me that in the last four years, three  
10 years at least, the Delta Mendota Canal in the lower  
11 section has violated five parts per billion standard.  
12 If you go back four years, there is only two violations.  
13 And it seems interesting how you would want to try to  
14 list it currently, right now, as water quality impaired  
15 for selenium with that kind of data. Most of the time  
16 when the violations occur, it occurs during times when  
17 the Delta Mendota Canal is out of service or very low  
18 flow. And then when the water picks back up or there is  
19 river flows, that is San Joaquin River flows or Kings  
20 River flows, the water quality improves.

21 We would ask that the Board not list the Delta  
22 Mendota Canal for selenium water quality impaired and  
23 add it to the monitoring list as Al mentioned prior. We  
24 support all the comments. They had implemented a very  
25 extensive daily water quality monitoring program for

1 selenium in the DMC. Let that prove out, see what it  
2 shows, and let the data drive the process as opposed to  
3 the process drives the data.

4 With that, I will answer any questions.

5 CHAIRMAN BAGGETT: Staff?

6 Dave, do you have any?

7 MR. CORY: The same. I will be very brief.  
8 David Cory with the San Joaquin Exchange Contractors. I  
9 represent them on water quality issues. I also farm in  
10 the Exchange Contractors' area. Just a couple things to  
11 reiterate.

12 We are uncomfortable generally with listing a  
13 manmade water conveyance system on the 303(d) list. In  
14 that if you extend out and look at listing all the  
15 delivery canals in the state, what is that going to do  
16 to water districts' ability to TMDLs in the natural  
17 water bodies? It could constrain our ability to respond  
18 to TMDLs for salinity and selenium and boron and those  
19 sorts of things on the natural river systems. That is  
20 one of our main concerns with the ultimate listing. We  
21 talked about the data, the Bureau, and Steve talked  
22 about the data issues, that we don't think it supports  
23 listing. In fact, if you look at the last three years  
24 of data you could actually make a case if it were  
25 currently listed that under the criteria it would be a

1 candidate for delisting, given there have been no  
2 occurrences or excursions in the last three years. That  
3 is an arguable point.

4 CHAIRMAN BAGGETT: Of the 92 samples it shows  
5 19 of them were above the criteria, and those all  
6 occurred in the first year.

7 MR. CORY: If you look back over the last  
8 three years, there have been -- the last excursion over  
9 the five-part number was on January 4th of 2000. That  
10 was the last time there was an excursion. I think when  
11 you look at this and you want to be very conservative in  
12 the approach, if you look at putting it on the  
13 monitoring list to continue to monitor it, I think it is  
14 an excellent candidate for that, given the fact that the  
15 Bureau has allocated funds to continuing an extensive  
16 monitoring program that does daily composite samples.  
17 They started it in July of 2001. They have the money  
18 allocated. I think somewhere around \$300,000 they've  
19 allocated for this year's monitoring program, and that  
20 will continue.

21 CHAIRMAN BAGGETT: So they have been doing  
22 monitoring since -- in the last two years?

23 MR. CORY: Yes. They actually --

24 CHAIRMAN BAGGETT: Daily monitoring?

25 MR. CORY: In July they implemented a daily

1 monitoring program where they take composite samples,  
2 and they show no exceedances to date on that. That is  
3 going to continue. They've allocated the funds. And it  
4 really makes sense. You talked earlier about having  
5 resources for monitoring programs. The resources have  
6 been allocated. The data to date supports not listing  
7 it. Placing it on the monitoring list is a conservative  
8 approach and falls within your criteria for monitoring,  
9 that there is the money actually spent, allocated in the  
10 Bureau files to do that.

11 So I would close with that and appreciate your  
12 hearing our comments on this matter, unless there are  
13 any questions.

14 CHAIRMAN BAGGETT: Thank you.

15 MEMBER CARLTON: Question for staff. I wonder  
16 if staff or counsel could comment on the question of  
17 listing the constructed waterways.

18 MR. C.J. WILSON: It is my understanding that  
19 the canal has beneficial uses designated in the Basin  
20 Plan.

21 MEMBER SILVA: Was once a realigned river with  
22 some of the large canals. I think to me that is where,  
23 in my mind, makes a difference, what the law does at  
24 this point is up in the air. I would have some trouble,  
25 problem putting it on monitoring if that, in fact, is

1 accurate, if they've been taking daily samples and we  
2 list 19 out of 92, something happened.

3 MR. C.J. WILSON: I can't speak to the last  
4 three years' worth of data. The Regional Board reviewed  
5 four years' worth of data, I think.

6 Joe, can you help me?

7 CHAIRMAN BAGGETT: This has been happening  
8 since last December, that is significant.

9 MR. C.J. WILSON: Four years' worth of data.  
10 If the last three years show that, I would like to see  
11 those data. I can't respond to.

12 MR. KARKOSKI: Joe Karkoski with the Central  
13 Valley Regional Board. The data we had available to us  
14 -- I think the recent cutoff date was, most recent  
15 cutoff date for submitting data was June. So looking at  
16 that data we had what you have before you, essentially  
17 19 out of 92 which was sufficient to --

18 CHAIRMAN BAGGETT: They are saying these were  
19 three years ago. That is the timing issue. It's been  
20 getting -- we don't know the timing. These were all  
21 four years ago. It was an event that happened a long  
22 time ago.

23 MR. KARKOSKI: I don't think that is the case.  
24 What is going on is there are drainage sumps that  
25 discharge into the Delta Mendota Canal. And I think

1 part of the argument is that that happens, you know, you  
2 see your concentrations go up in the DMC and when there  
3 is flow in the DMC it goes down.

4 CHAIRMAN BAGGETT: Grasslands, is this where  
5 the Grasslands drains into?

6 MR. KARKOSKI: It is above that. But in order  
7 to prevent the groundwater from building up behind the  
8 DMC, there are drainage sumps that are now in selenium.  
9 Those guys can probably say when that normally occurs.

10 UNIDENTIFIED AUDIENCE MEMBER: Can we talk  
11 about the data?

12 CHAIRMAN BAGGETT: No. I would have no  
13 problem since we are going to be back here within 12, 18  
14 maybe 24 -- definitely within 24 months, maybe 12  
15 months. If there is, in fact, a daily monitoring  
16 program funded, that would give us some solid, more  
17 solid data. I don't want to go to the waters of the  
18 U.S. issue. Then we don't have to go there. We are  
19 going to monitor; we made that decision. At this point  
20 we made the decision. It is jurisdictional with the  
21 monitoring.

22 The last for Region 5 and then take two from Region  
23 2, and then we'll take a break before we get back from  
24 Region 4 and Region 1.

25 Peter McGaw, the last for Region 5, Turlock

1 Irrigation District.

2 MR. MCGAW: Good afternoon. I am Peter McGaw  
3 from Archer Norris in Walnut Creek. I am here on behalf  
4 of the Turlock Irrigation District. I am here to talk  
5 specifically about the Harding Drain. The Harding  
6 Drain, which I know is near and dear to all of your  
7 hearts following your decision in the City of Turlock  
8 NPDES permit.

9 A little background. What we are doing here is an  
10 administrative process. That means you have to make a  
11 finding, have to be supported by evidence in the record.  
12 You need to make a finding that there are beneficial  
13 uses of these particular water bodies that are, in fact,  
14 impaired. With that in mind, let's look at what you did  
15 in the City of Turlock permit appeal decision.

16 You overturned that permit. You didn't remand it  
17 back; you overturned it with direction to the Regional  
18 Board to conduct further investigation and make further  
19 finding because they in that permit had not supported  
20 the record on beneficial uses for the Harding Drain.  
21 What you specifically said in that decision was only one  
22 beneficial use, agricultural drainage and irrigation, is  
23 described in the permit as an existing use of the  
24 Harding Drain.

25 The findings that concerned the uses of the San

1       Joaquin River, and this is on the Tributary Rule issue,  
2       the findings that concern the uses of the San Joaquin  
3       River are insufficient to connect potential impacts of  
4       the discharge to these beneficial uses. What you found  
5       in the City of Turlock appeal was that there were no  
6       designated beneficial uses for the Harding Drain. There  
7       was insufficient evidence to establish the beneficial  
8       uses of that water body. If that is, in fact, the case,  
9       then there are no beneficial uses yet which can be  
10      deemed to be impaired. And, therefore, you do not have  
11      a basis for including the Harding Drain on the current  
12      303(d) list.

13             For that reason we suggest you take it off the list  
14      and deal with it in some other fashion. I understand  
15      the concern that you don't want to undermine the current  
16      activities of the Regional Board in determining what  
17      those beneficial uses are. But taking this water body  
18      off the list now is not going to undermine anything that  
19      the Regional Board may do in the future. They have to  
20      go through the process anyway; they have to decide  
21      whether there are beneficial uses for the Harding Drain  
22      other than an ag drain.

23             At this point there are no designated, determined  
24      beneficial uses for the Harding Drain. It simply does  
25      not belong on that list. Why you -- you might ask, why

1 is this such a big issue? It is a low priority TMDL; it  
2 is not going to happen for a while. We are all going to  
3 be back here in April of 2004, as we now know, looking  
4 at these issues again. And let me suggest to you that  
5 the concern is this: Once a water body is on the list,  
6 it is hard to get off the list. Just the perfect  
7 example, Harding Drain was improperly placed on this  
8 list the last time around. The rationale for having it  
9 on the list this time is, well, it is there now; we'll  
10 deal with it next time.

11 CHAIRMAN BAGGETT: It is already on the list.  
12 You are asking us to take it off?

13 MR. MCGAW: I am asking you to take it off  
14 this particular list because you don't have the evidence  
15 in this particular --

16 CHAIRMAN BAGGETT: But it is already on the  
17 list so we would have to delist it.

18 MR. MCGAW: You would have to take it off the  
19 list because of information that you now have and of  
20 absence of evidence in this record. This list has to  
21 stand alone. This list is this list, and it has to be  
22 supported by the record and the findings that you make  
23 in support of this list.

24 So the fact that it's been on a prior list really  
25 is not the concern. Is there evidence in this record to

1 support including this water body on this list? And in  
2 light of the lack of beneficial uses of the Harding  
3 Drain, I suggest this is not appropriate.

4 Thank you very much.

5 CHAIRMAN BAGGETT: Craig, you have a comment?

6 MR. C.J. WILSON: This is one of the  
7 difficulties in doing this list this time around. We  
8 brought forward a number of listings from the '98 list  
9 without complete review. We have this comment from many  
10 people. There is nothing in our record at this point to  
11 substantiate what is being said here. I'm going on what  
12 this letter says.

13 I'm not sure if this was simply a permit that  
14 wasn't as accurate as it could be or if the beneficial  
15 use really doesn't exist in that water body. I think  
16 that the Basin Plan is fairly clear on the Tributary  
17 Rule, and the way I read the order was that the permit  
18 wasn't clear, it needed to be clarified. And that is  
19 the way I would approach this. We don't have anything  
20 new in our record to substantiate throwing it off the  
21 list at this point.

22 CHAIRMAN BAGGETT: And this Board can go in  
23 the Basin Plan. We remanded for Regional Board to  
24 consider that.

25 MR. LEVY: Mr. Chairman, Members of the Board,

1 just to clarify. The decision to list was made in 1998.  
2 That decision was final. Until there is some basis to  
3 change it, this record does not have to support the 1998  
4 listing.

5 THE COURT REPORTER: Your appearance for the  
6 record.

7 MR. LEVY: Michael Levy, staff counsel.

8 MEMBER CARLTON: Mr. Chairman, just for the  
9 record, at this time I would like to make it clear that  
10 because of my prior involvement in Central Valley Board,  
11 I will be recusing myself from decisions of the Board on  
12 the Region 5 list even though I have some questions of  
13 curiosity.

14 CHAIRMAN BAGGETT: Thank you.

15 We have no legal authority to amend that Basin Plan  
16 which is what we remanded it back to be done. So I  
17 disagree with counsel for Turlock; that is what we did  
18 in that order. I sat through it. My name is on it, and  
19 I think Pete's and Richard's. That is what we remanded,  
20 for them to look at that. We can't do that. Until they  
21 change it, if they change that back, then I think it can  
22 come back in a year or two, bring the data.

23 Let's do two more and then we'll take a break.  
24 There are only two from Region 6, San Francisco Bay  
25 area, that I could find in here. WaterKeepers of

1 Northern California, Shana Lazerow and then we have San  
2 Francisco BayKeeper.

3 MS. LAZEROW: Good afternoon. My name is  
4 Shana Lazerow, and you had it just right. I am the  
5 staff attorney at WaterKeepers of Northern California.  
6 I am here to make some general comments on behalf of the  
7 WaterKeepers organization and then some specific  
8 comments on behalf of San Francisco BayKeeper. You have  
9 heard a lot about the three alternative lists, and so  
10 I'm not going to bore you too much about it. But I do  
11 want to talk about the monitoring list, specifically  
12 because I am very concerned about the fact that you have  
13 removed San Francisco Bay listing from being listed on  
14 the 303(d) list for copper and zinc, and put it on the  
15 monitoring list.

16 We have no problem with there being a monitoring  
17 list if you specifically want to focus extra attention  
18 on specific waterways as you want more data about them.  
19 Do that in addition to the 303(d) list because there is  
20 no basis for delisting San Francisco Bay. The principle  
21 that you would have this separate monitoring list sort  
22 of instead of the 303(d) list completely contradicts the  
23 Clean Water Act. There is no room in the act there. I  
24 can see you have heard this argument before.

25 CHAIRMAN BAGGETT: We disagree. We are trying

1 to encourage programs, like the Bureau stepped up to the  
2 plate. That's what we would like to see, is parties  
3 stepping up to the plate, running a monitoring program  
4 like they have done down there, the Delta Mendota. That  
5 is a case in point, where you don't ever have enough  
6 data. I think we are updating a lot of this.  
7 Dischargers, I know, are putting a lot of money into a  
8 lot of monitoring.

9 MS. LAZEROW: I think that is fine in addition  
10 to this process, but it can't substitute for -- the  
11 regulated community cannot become the regulator. That  
12 is your job, not theirs. As part of the delisting of  
13 San Francisco Bay goes, I know there has been a process  
14 set up specifically to assess that. And to cut that off  
15 right now when it isn't completed, it's not even close  
16 to completed, is to gut the whole process, and I think  
17 it is truly counterproductive.

18 I would also like to say that putting, what,  
19 something like eight waterways on the monitoring list  
20 for PCBs is a huge mistake and those also should go on  
21 the 303(d) list.

22 Thank you.

23 CHAIRMAN BAGGETT: Thank you.

24 MS. LAZEROW: Any questions?

25 CHAIRMAN BAGGETT: Thank you.

1 MS. CHOKSI: I am Sejal Choksi. I am here  
2 with the San Francisco BayKeeper. And you probably  
3 heard these arguments before, too, but I am going to  
4 reiterate some of them.

5 We greatly appreciate the Board's efforts and use  
6 of the '98 list. I know that was in question. But San  
7 Francisco BayKeepers is specifically opposed to the  
8 enforceable program list. This proposed list is illegal  
9 because it violates the requirements of the Clean Water  
10 Act. It is also bad policy because it basically allows  
11 the state to delay water quality protection under the  
12 guise of an enforcement action.

13 The Clean Water Act does not authorize any  
14 alternative to the 303(d) list process. If a water body  
15 is impaired, it must be placed on a 303 list; there is  
16 no question you can have an additional list, but if it  
17 is impaired it should be placed on a 303(d) list. A  
18 clear example of how the enforcement fails for storm  
19 water quality is in the case of Castro Cove.

20 The state improperly delisted Castro Cove last  
21 month and placed it on an enforceable program list  
22 because it's designated as a toxic hot spot. This  
23 program is not a viable method for meeting water quality  
24 standards. It lacks, as Chairman Baggett mentioned  
25 earlier, timetables, benchmarks and funding. It also

1 fails to reevaluate the waste discharge requirements as  
2 required by the Bay Protection Toxic Hot Spots Cleanup  
3 Plan. The toxics hot spots program is not a viable  
4 alternative. And even if it were, this state is still  
5 required by law under the Clean Water Act to place all  
6 impaired waters on 303(d) list.

7 So, therefore, San Francisco BayKeeper asks that  
8 Castro Cove along with Peyton Slough and Steve Marsh all  
9 be placed on the 303(d) list.

10 Thank you.

11 CHAIRMAN BAGGETT: Thank you. Let's take a  
12 break and we will come back and maybe talk about Castro  
13 Cove, take about 10 minutes.

14 (Break taken.)

15 CHAIRMAN BAGGETT: Let's go back. It would  
16 nice to get out of here before dinner.

17 Let's start out with the City of Los Angeles,  
18 Department of Water and Power, Julie Conboy, next one.  
19 How about Vicki Conway. Are you ready?

20 MS. CONWAY: Hi, I'm Vicki Conway from Los  
21 Angeles County Sanitation District, and I will be very  
22 brief. We don't have a presentation, which you will be  
23 happy to hear.

24 CHAIRMAN BAGGETT: We'd like a copy of yours  
25 this morning if you've got it. You have a CD, we can

1 make a copy of it.

2 MS. CONWAY: Yes, I can mail a copy, but I did  
3 leave hard copies.

4 We did submit written comments to the Board on  
5 January 30th. I'm actually here to address another  
6 issue regarding the chloride TMDL workshop from this  
7 morning. The district requests the Reaches 5 and 6 of  
8 the Santa Clara River be delisted from the 2002 303(d)  
9 list for chloride. As the basis for this, it is highly  
10 questionnable and there is not evidence that an actual  
11 physical impairment of the upstream use. We recommend  
12 that these reaches be added to the monitoring list.

13 CHAIRMAN BAGGETT: After all we did this  
14 morning.

15 MS. CONWAY: We have a recommendation that I  
16 think can be a win-win situation here. Basically, we  
17 request that Reaches 5 and 6 be added to the monitoring  
18 list while the objective is reevaluated. And once the  
19 objective has been reevaluated, we would recommend that  
20 another assessment be made of the impairment  
21 determination.

22 The districts will continue to do the studies and  
23 work in coordination with the Regional Board as  
24 committed by Mr. Stale this morning, and also we would  
25 like to point out that if you were to delist this it

1 would eliminate concerns over the timing with the  
2 consent decree because we would no longer be driven by a  
3 deadline to get this work done.

4 CHAIRMAN BAGGETT: And you suspect that Region  
5 9 would go along with this delisting? I suspect they  
6 won't.

7 MS. CONWAY: It would basically resolve the  
8 issue on consent decree.

9 CHAIRMAN BAGGETT: I understand.

10 MS. CONWAY: This is different than the other  
11 '98 listings as the State Board last time delisted this  
12 for similar reasons over the objectives and  
13 inconsistencies.

14 CHAIRMAN BAGGETT: I guess my suggestion would  
15 be since we already spent an hour and a half on this  
16 morning, I guess I would propose that we will back here  
17 in less than two years. If the monitoring commitment is  
18 there to do this kind of monitoring and do this, you can  
19 come back then and we will have the data and we can have  
20 something defensible to delist it with. I don't know  
21 how we can -- this is a slippery slope.

22 If we start doing this, as I think has been pointed  
23 out by more than one speaker today and more than one  
24 written comment, this is exactly what they are -- the  
25 environmental community is concerned about, and I would

1 share that concern.

2 MS. CONWAY: Thank you for the time.

3 MEMBER SILVA: It was good comic relief. Good  
4 try.

5 MS. CONWAY: You realize we don't have two  
6 years, because we are going down a TMDL that will be  
7 established in just a few months here. And that is --

8 CHAIRMAN BAGGETT: There will be no  
9 implementation plans.

10 MEMBER KATZ: You can sue anyhow.

11 MS. CONWAY: Thank you.

12 CHAIRMAN BAGGETT: Now the L.A. DWP. Is Julie  
13 here?

14 MS. CONBOY: Good afternoon. My name is Julie  
15 Conboy, and I am a deputy city attorney in the City of  
16 Los Angeles. I am only here for the Department of Water  
17 and Power, not the L.A. River.

18 First of all --

19 MEMBER KATZ: Your office is suing us?

20 MS. CONBOY: Another part of it.

21 MEMBER KATZ: City is suing for trash and  
22 storm water and all those other pollutant things that  
23 you don't think are a problem.

24 MS. CONBOY: In my office we are concerned  
25 about pure, safe water.

1           MEMBER KATZ: Which is why City Attorney's  
2 office is suing us on storm water and trash.

3           MS. CONBOY: The City Attorney who is  
4 representing other clients within the city.

5           MEMBER KATZ: No, the City of Los Angeles.

6           MS. CONBOY: Point well taken. But here we  
7 could avoid ever suing you on this issue altogether  
8 because it is about time and money as Mr. Baggett was  
9 saying at the beginning of the meeting.

10           I would like to, first of all, commend the Lahontan  
11 staff for advocating taking Tinemaha Reservoir off the  
12 list. And I know that they received the data from DWP  
13 back in November or December, and if I could just quote  
14 from an E-mail of Chuck Curtis, the TMDL manager of  
15 Lahontan.

16           He says the data indicates that dissolved copper is  
17 not detectable in the water body. Therefore, water  
18 quality objective, as defined by California Toxics Rule,  
19 is not being violated and there is no impairment of  
20 aquatic life and beneficial uses due to copper toxicity  
21 in Tinemaha Reservoir.

22           So we are in agreement with Lahontan on that. We  
23 would urge this Board to take that off of the 303(d)  
24 list. As far as Hawiee Reservoir goes, and Mr. Bagget  
25 has heard this plea many times, it has been listed for

1 impairment due to copper sulfate, a drinking water  
2 chemical that Los Angeles must add to comply with the  
3 Department of Health Services permit for safe drinking  
4 water.

5 With California's dwindling water, it is coming  
6 from the Colorado River and other sources, cities need  
7 to rely on the water rights. And Los Angeles has legal  
8 rights to take water from the Owens Valley. That is  
9 brought into Hawiee Reservoir, and it must be treated  
10 before algae is allowed to grow on there and add toxics  
11 to the water which have been shown to be dangerous to  
12 the people.

13 The best management practices in the water industry  
14 are to use copper sulfate on an as-needed basis to treat  
15 these algae. This management practice is what the  
16 Lahontan Board and this Board is seeking to put a  
17 maximum daily load on by leaving Hawiee on the 303(d)  
18 list. Los Angeles already constantly monitors this  
19 water and gives this information to the local county  
20 agricultural board as well the Department of Health  
21 Services. And at the last time that we were here, Mr.  
22 Baggett did make comparison to adding drinking water  
23 chemicals to a golf course and keeping that water blue  
24 and the importance of adding it to a drinking water  
25 reservoir. And you made the distinction that, one, it

1 is very important to societal needs. We have done  
2 everything we can to comply with the Department of  
3 Health Services' mandates that this water is kept safe  
4 as well as to comply with the State Board's  
5 jurisdiction.

6 However, at this point there is no evidence that  
7 fishing is impaired, and that was the original reason  
8 that this water was placed on the list back in the '90s.  
9 And Los Angeles needs to do something to protect its  
10 ratepayers and the people who drink the water.

11 Lastly, we have gone into this several times and we  
12 anticipate that we will have to go into it in the  
13 future, the water of the United States issue of Hawiee  
14 Reservoir. You have our papers. You know that we dug a  
15 hole in the ground and put the water there to retain it.  
16 But the legal fiction of delaying whether this is a  
17 water of the United States for a hearing or workshop  
18 sometime later in the spring doesn't resolve the issue  
19 as to whether this is within your jurisdiction.

20 Today you are acting as an agent of the federal  
21 government and whether you put a water body on a list  
22 that you send to the EPA and say this is impaired water  
23 body of the United States needs to mean something. It  
24 means something if it really is a water of the United  
25 States, if it meets the legal definition that you

1 understand it to be as well as what the courts will  
2 understand it to be.

3 This jurisdiction needs to come before everything.  
4 When I was a prosecutor for the City of Los Angeles, you  
5 can prove that someone was drunk, you can prove that he  
6 was driving. But if he wasn't in the City of Los  
7 Angeles, someone else --

8 CHAIRMAN BAGGETT: Or we can ignore it and  
9 just list it. I think we can make that decision de  
10 facto.

11 MS. CONBOY: Well, when you're listing it, you  
12 are saying this is a water of the United States. In  
13 saying that means that you should stand behind that.

14 Unless there are any questions, thank you.

15 MR. LEVY: Mr. Chairman, Members of the Board,  
16 Michael Levy, Senior Staff Counsel. Just to clarify.  
17 Listing a water does not necessarily imply that it is a  
18 water of the United States. You must list all impaired  
19 waters of the U.S. However, if you list waters of this  
20 state that are not waters of the U.S. at all, there is  
21 nothing in state or federal law that prohibits you from  
22 doing so.

23 CHAIRMAN BAGGETT: That is not really an issue  
24 before us, anyway.

25 MR. LEVY: That's right.

1           CHAIRMAN BAGGETT: I think we talked about this  
2 at length before. I thought we resolved that. We will  
3 leave that as to one follow-up at the end. Just wait  
4 for the end. We have a lot of people. We can get  
5 through some of these other ones. That and Castro Cove,  
6 we will come back to that, and the trash. We have three  
7 of them so far to come back to. And selenium, the  
8 Mendota, we worked that one out. We agreed to put that  
9 on monitoring.

10           Anjali, and then Leslie Mintz.

11           MS. JAISWAL: Good afternoon, Members of the  
12 Board. I am Anjali Jaiswal, project attorney with NRDC.  
13 NRDC, we support the state's use of the 1998 list, as we  
14 have said before. And we really support the State  
15 Board's effort to make a defensible list by using  
16 credible science and credible studies to list impaired  
17 waters, including Southern California beaches for trash,  
18 which all Californians know that the coastal economy  
19 benefits from having cleaner coastal waters.

20           We have a major concern with the listing process,  
21 not only as it pertains to this list, but for the future  
22 eminent list that is coming up and for the eminent  
23 guidelines, the listing policy that the State Board is  
24 going to issue. We are particularly concerned about the  
25 alternative enforceable programs list. I am not going

1 to repeat what Linda said, but I am going to add a new  
2 analysis to what she said.

3 All of the 49 water segments that are on the  
4 alternative enforceable program list were on the 1998  
5 list. They remain impaired today. These waters should  
6 be placed on the 303(d) list. They should be kept on  
7 the 303(d) list and the State Board should use the  
8 flexibility that it's given by making these waters a low  
9 priority.

10 Also, and then if the promises materialize, if  
11 these waters actually meet water quality standards, then  
12 they can be taken off the 303(d) list. We oppose the  
13 alternative enforceable programs list there because  
14 there are no assurances because there is no  
15 accountability. Yes, the State Board has set a bar as  
16 far as what they expect dischargers to meet or how they  
17 want them to fulfill these promises. But if you look at  
18 these promises, they are hollow. For example, in Los  
19 Angeles we have the county sanitation districts saying  
20 by June of this year there are 31 water segments in Los  
21 Angeles that are on the alternative enforceable programs  
22 list, that by June of this year they will be meeting  
23 water quality standards. You look at their promises; it  
24 says that they are pursuing additional nitrification and  
25 denitrification facilities, that they expect these

1 facilities to reduce pollutants.

2 Where is the accountability? Also, in the same  
3 point, it addresses point sources. What about nonpoint  
4 sources? The promises are also hollow when they say it  
5 is probable that 95 percent of the pollutants will be  
6 decreased. What about the other 5 percent? With that  
7 other 5 percent, does that mean that water quality  
8 standards will be attained? The whole analysis for  
9 these water bodies is based on the Los Angeles River,  
10 and then it is applied to the San Gabriel River.  
11 However, the San Gabriel River doesn't have its own  
12 analysis. So I ask where is the accountability? Yes,  
13 the State Board has set a bar, but the bar is not high  
14 enough.

15 Another example, which I know you will be  
16 discussing later, is the case of Castro Cove. In that  
17 case Chevron and Texaco wrote the State Board a letter  
18 last fall saying we are going to put a bunch of money in  
19 this program and we have a plan. But as of yet, as far  
20 as I know, the plan has not been implemented. They say  
21 that Castro Cove will be meeting water quality standards  
22 by next December when the plan hasn't even been  
23 implemented. And more importantly, this letter is an  
24 indication of how there is abuse of this list. This  
25 letter that was submitted by Chevron/Texaco last fall is

1 enough to -- suffices as an enforceable program? And so  
2 I ask the State Board to be wary of the abuses of the  
3 enforceable program list in particular and monitoring  
4 list.

5 There is no evidence in the record for many of  
6 these waters to support the State Board's assumption  
7 that these alternative enforceable programs will  
8 actually work to meet water quality standards, let alone  
9 meet the substantial evidence standards that is required  
10 by law. As you know, the environmental community, we  
11 believe that the alternative enforceable program is  
12 illegal, and it doesn't -- that it does not comport with  
13 303(d). It goes well beyond the 301 programs.

14 Also, the reliance of State Board is saying, well,  
15 look, we are just doing what EPA told us, we are  
16 following EPA guidance. I ask you to revisit EPA's  
17 guidance. EPA's guidance says that for waters to be  
18 listed on alternative enforceable programs list that  
19 there needs to be specifics. They need timetables.  
20 They need monitoring. They need benchmarks. State  
21 Board recognizes -- I don't think a letter from  
22 Chevron/Texaco qualifies. Also other programs that have  
23 been used for years that still are not cleaning up the  
24 waters.

25 As you know, the alternative enforceable programs

1 list effectively further derails the TMDL program that  
2 this State Board is behind. That these TMDLs were due  
3 over 20 years ago. Importantly, this -- if this is  
4 hurried -- I appreciate the State Board's three drafts  
5 and all the hearings that we have had on it. But in the  
6 ongoing process to set this kind of precedence without  
7 thinking of the impact, this is not the right time to  
8 set a precedent for an alternative enforceable program  
9 list.

10 I also would like to join Linda's comments on the  
11 monitoring list. There are several waters on that  
12 monitoring list that there is sufficient evidence of.  
13 And as you heard earlier today in the example of how  
14 this list is being used, pleased by dischargers to abuse  
15 this list further, even today in the eleventh hour. But  
16 an excellent example is the PCB, impaired waters. There  
17 has been evidence submitted by NRDC in the form of  
18 several studies. We also submitted a letter by a  
19 doctor, a medical doctor, noting the health effects. So  
20 it is unclear how the State Board can say there is no  
21 information on the effects of PCB and the links to water  
22 quality in the administrative record when we have  
23 submitted this evidence ourselves.

24 There are lots of other arguments that you can  
25 refer to in our previous comment letter as to PCBs.

1           Finally, general comment. This adds to Linda's  
2 comments as well on the listing process and the listing  
3 policy that is being developed. Our concerns have not  
4 fully been addressed.

5           CHAIRMAN BAGGETT: It is not even a draft yet.

6           MS. JAISWAL: In the drafting process, we just  
7 -- we hope and we hope that this State Board will  
8 consider all of your comments in drafting the list. And  
9 we also join on the request for the Regional Boards  
10 comments.

11           Thank you.

12           CHAIRMAN BAGGETT: Linda Mintz.

13           MS. MINTZ: Good afternoon, Linda Mintz,  
14 attorney for Heal the Bay. I am not familiar with the  
15 Orange County Trash beaches TMDL, but I would like to  
16 register support for the State Board listing for these  
17 beaches, largely because Heal the Bay does have  
18 familiarity with SCCWRP.

19           CHAIRMAN BAGGETT: Good science.

20           MS. MINTZ: SCCWRP is very credible. It is  
21 extremely reputable, and I think that studies by them  
22 should be highly regarded. We also administer Coastal  
23 Cleanup Day in L.A. County. And although we don't  
24 administer it in Orange County, I can tell you from  
25 personal experience that the trash accounted for at

1 Coastal Cleanup Day is usually much less than what is  
2 actually present on the beach. So you can factor that  
3 into your analysis as well.

4 I echo everything Linda and Anjali had to say.

5 Chairman Baggett, I just wanted to note that if one  
6 of your objectives is to step up participation by  
7 dischargers and the agencies in terms of paying for  
8 monitoring, it seems to me that that objective would be  
9 better served by having waters remain on the 303(d) list  
10 and providing more incentive for them to pay for  
11 monitoring to get them off the list.

12 We do also want to acknowledge that staff has  
13 worked very hard on this and we are in support of  
14 several of the listings. And ironically, I had actually  
15 come here today to ask about a very thing that you  
16 addressed at the outset, which was our ability to  
17 participate in the process of a listing policy itself  
18 And I wanted to ask the State Board if we could receive  
19 the State Board comments on USEPA's CALM, Consolidated  
20 Assessment Listing Methodology, something that I had at  
21 a PAG meeting in July.

22 I am pleased to hear that we will be able to get  
23 Regional Board comments on any draft policy. That was  
24 going to be another request.

25 The original timeline had said that January would

1 be when a draft policy was circulated to the Regional  
2 Boards and available to the public in April 8. So a  
3 third request was going to be if that still holds true,  
4 if the AB 982 public advisory group could perhaps see a  
5 draft prior to the release in April, maybe before our  
6 March meeting, because we would like to have some input  
7 into that policy and in particular Heal the Bay is  
8 interested in the beaches component.

9 You have several of our comment letters, and our  
10 beaches issues have not been addressed, either in the  
11 very first draft policy that was issued or in this staff  
12 report for this list. I think that we have several  
13 members who sit on the beach water quality work group  
14 who feel very strongly that what is currently in the  
15 staff report for this list is not representative of the  
16 final recommendations and does not accurately portray  
17 how those recommendations are viewed by all members of  
18 the group.

19 In closing, I just wanted to remind this Board,  
20 something I seem to be always reminding you of, in terms  
21 of listing, that again it is imperative that California  
22 hold the line for the nation. And even if there are  
23 political issues or administrative efficiency issues, an  
24 impairment is an impairment is an impairment. And we  
25 hope that you keep that in mind.

1 Thank you.

2 MR. C.J. WILSON: With respect to the comments  
3 on the CALM guidance, EPA published a document in July.  
4 They released it. We have copies of it. They did not  
5 request any comments. We did not make any comment on  
6 that report.

7 CHAIRMAN BAGGETT: We can summarize what we  
8 have already summarized. The guidance, there is nothing  
9 out there. There is no draft. We have been -- I know  
10 you have fairly been busy on other issues and these  
11 hearings.

12 Sujatha and Richard Watson.

13 MS. JAHUGIRDAR: Thank you. My name is Sujatha  
14 Jahugirdar. I represent Environment California, which  
15 is the new home of California Environmental Work. I am  
16 California safe drinking water advocate. I am here just  
17 to give a little bit of a big picture perspective and  
18 address some of the concerns that, I think, have been  
19 mentioned by my colleagues from the environmental  
20 community. But I think they are important enough to  
21 bear repeating.

22 Drinking water is of paramount importance to the  
23 citizens of California in an age where we have just  
24 witnessed recent cuts to the Colorado River to  
25 California where the specter of drought looms on the

1 horizon. It is more important than ever to be  
2 protecting the drinking water supplies of the state.

3 The TMDL process is the essential piece of the safe  
4 drinking water policy and, therefore, is a top priority  
5 for the safe drinking water program and Environment  
6 California. The 303(d) list, again, as I am sure you  
7 are aware of, is an essential part of this TMDL process.  
8 We echo the appreciation voiced by previous speakers of  
9 State Board's time and efforts put into assembling this  
10 list. We appreciate the addition of several water  
11 bodies onto the new 2002 list as well.

12 However, there are several concerns that remain,  
13 from our perspective, with this current 303(d) list.  
14 Many of them have already been mentioned by my  
15 environmental colleagues, namely with the addition of --  
16 the use of multiple lists in the this 303(d) process.  
17 And several of the concerns, the use of the monitoring  
18 list with the enforceable programs list, that has  
19 already been voiced by my colleagues, so I would like to  
20 concentrate my comments on the use of the TMDLs  
21 completed list.

22 We believe the use of the TMDLs completed list is  
23 inconsistent with the goals of the Clean Water Act. In  
24 fact, undermine the intent of the Clean Water Act. The  
25 only basis for the listing or delisting of a water body

1 from the (303)d) list should be whether or not water  
2 quality standards have been attained. The use of such a  
3 list would undermine the use of the standards in several  
4 ways. And I can point to just one example, which is  
5 with the L.A. trash TMDL where we are seeing litigation  
6 that may last for several years. So when you are  
7 talking about a case like that, well, what is the  
8 definition of TMDL completed? Clearly water quality  
9 standards have not been attained in this case. Yet with  
10 the use of this list examples like the Los Angeles River  
11 trash TMDL could be endangered of being delisted.

12 So that is the first concern we have with that.  
13 The second concern we have with the use of this list is  
14 increased staff time and the complications and the error  
15 that will likely be introduced through the use of  
16 multiple lists. I think we all agree -- I think the one  
17 thing we can all agree on is that this process is  
18 complicated and takes a lot of staff time, and so to be  
19 introducing three variations of lists that require  
20 double, triple, quadruple checking will just, I think,  
21 end up complicating the process. So for these two  
22 reasons we believe that the TMDLs completed list should  
23 not be employed in this process. And once again  
24 reiterate the standpoint of the environmental community  
25 that the only list that should be employed here is one

1 list which is the 303(d) list. And from my perspective  
2 the consequences and the ramifications for safe drinking  
3 water policy in the state are extremely relevant to this  
4 process and hope that the Board seriously considers  
5 these comments.

6 Thank you.

7 CHAIRMAN BAGGETT: If there is any comfort, if  
8 there is a monitoring list they are delisted. They  
9 aren't listed if they are on a monitoring. That is why  
10 it is a monitoring list; they aren't on the list.

11 Richard Watson.

12 MR. WATSON: Good afternoon, Chairman Baggett,  
13 Members of the Board. My name is Richard Watson. I am  
14 before you today representing the Coalition for  
15 Practical Regulation. And I want to thank you again for  
16 this opportunity to make our thoughts known on the  
17 revisions to the 303(d) list. I, too, want to thank the  
18 staff. They've done a remarkable job in attempting to  
19 really strengthen the 303(d) list, which in times past  
20 often didn't really get much attention. It was just  
21 sort of rubber stamped, and sometimes didn't get  
22 approved by Regional Boards before recommendations came  
23 up here. So the process is greatly improved.

24 I also want to support their recommendation for the  
25 monitoring list as well as enforceable programs list and

1 a TMDL completed list. The monitoring list should be  
2 used for water bodies when pollutants have not been  
3 identified or when there is insufficient data to warrant  
4 a 303(d) listing. The monitoring list provides the  
5 state and Regional Boards with a framework of furthering  
6 examining these water bodies for future possible  
7 actions.

8 Secondly, I would like to again thank the Board for  
9 the addition of several delisting factors which have  
10 been introduced in the 2002 revision. Water bodies with  
11 the enforceable programs can now be put on that list and  
12 there were certain water bodies that were delisted  
13 because the sources were found to be natural. These are  
14 important changes because they enhance the validity and  
15 the integrity of the 303(d) list and actually improve  
16 respect for the process.

17 However, there are some problems that do remain and  
18 some of these were exemplified earlier with the  
19 confusion that was discussed regarding the TMDL in San  
20 Diego County. One of the greatest problems remained  
21 about the designation of impairments. Significant  
22 problems -- one of the problems is that there are still  
23 proposed listings for which specific pollutants are not  
24 identified. This is important because the 303(d) list  
25 drives TMDLs.

1           The Clean Water Act specifically states that states  
2 are to establish TMDLs for identified pollutants  
3 suitable for calculation that are causing violation of  
4 water quality standards. And if we start listing things  
5 for general conditions that those conditions do not form  
6 the basis very well of a TMDL. Thus, they should not be  
7 listed. Rather than including conditions of impairment  
8 in the 303(d) list itself, they should be placed in a  
9 monitoring list so that pollutants can be identified.

10           Earlier Craig noted that it's been policy to  
11 identify pollutants first in discussing the situation  
12 with the Board. However, the following are examples of  
13 some of the general conditions where pollutants are not  
14 identified, but listings have been proposed: beach  
15 closures, toxicity, color, odors, eutrophication and et  
16 cetera. He elaborated on the problem with  
17 eutrophication. These are conditions, not pollutants.  
18 Water bodies should not be listed for these conditions  
19 on the 303(d) list. They should instead be placed on a  
20 monitoring list. That way the pollutants can be  
21 identified and future action can be planned.

22           I often do not agree with Linda Sheehan, but she  
23 may have been right on the point that she made. She  
24 said where we don't have enough information maybe we  
25 just ignore it -- maybe she didn't say ignore -- keep

1       them off the list, not put them on the list, and that is  
2       the case with the conditions of impairment. We don't  
3       have enough information. We don't know what is causing  
4       those impairments. Those are sort of general conditions  
5       for which there is not a lot of data. They are  
6       observations, and perhaps they get left on the 305(b),  
7       either that or they be put on a monitoring list where  
8       some focus can be placed on them through monitoring  
9       efforts.

10               Coalition members are particularly concerned about  
11       inappropriate listings in L.A. County, and in particular  
12       the coastal portion of Region 4. But the problem is  
13       really statewide, and we ask that you direct staff to  
14       remove all listings for which pollutants are not  
15       identified from the revised list of impairment before  
16       you forward that list to EPA for approval.

17               Lastly, I would like to echo a comment made this  
18       morning by Chairman Baggett. I agree with what he said.  
19       He said we really have to look at the water quality  
20       standards. We do. We need a comprehensive review of  
21       the Basin Plans. We don't need continuation of partial  
22       or cursory triennial reviews. We really need a  
23       comprehensive review and that will help establish a lot  
24       more credibility to the whole process.

25               Again, thank you.

1                   MR. C.J. WILSON: Just a point of  
2 clarification. In this review of the 303(d) list we did  
3 it a case-by-case basis. In every case where he had new  
4 data, we evaluated the way I described, looking for the  
5 pollutants and not the conditions. There are many  
6 conditions that were brought forward from the '98 list,  
7 and that is the difference.

8                   CHAIRMAN BAGGETT: I am aware of that. If  
9 everybody here realizes we spent -- I have probably five  
10 days of hearings. Pete is the same, and Richard. We've  
11 all had numerous -- Pete and I had workshops in the  
12 south. We spent a lot of hours as well as in briefings  
13 and reading over this stuff. I would say the Board has  
14 gone through this by on a water-by-water basis, carrying  
15 our trusty binders.

16                   With that, there are two more from Rodney Anderson  
17 and Adam Ariki. City of Burbank, I don't want to  
18 confuse it, another city down south.

19                   MR. ANDERSON: Move that up a little bit.

20                   I am going to hand you some graphs so you can  
21 look at it.

22                   Good afternoon. I am Rodney Anderson. I am  
23 representing the City of Burbank Public Works. The  
24 issue I would like to address is simple and  
25 straightforward, not as complex as many of the ones you

1 are having to deal with.

2 The Burbank Western Channel is listed as impaired  
3 for cadmium in this list. Our response is the sampling  
4 over the past two years has shown zero exceedances.  
5 Therefore, it is not impaired and should not be listed.  
6 In June of 2002 the City of Burbank submitted 15 samples  
7 that clearly show cadmium levels meeting water quality  
8 standards. This data was further substantiated by 18  
9 additional data points collected over the last nine  
10 months. Even without the recent data that we have  
11 submitted, and I understand submitting recently is  
12 difficult to analyze all that data, but even with the 15  
13 that we had submitted back in June, there was zero  
14 exceedances in all 15 of those. The graph that I have  
15 presented to you shows the chronic toxicity criteria and  
16 it varies depending on the hardness of the water, and it  
17 is approximately about five micrograms per liter. All  
18 of our samples, 33 sometimes over the past two years,  
19 have shown less than 0.5 micrograms per liter. We are  
20 not even close to the criterion.

21 So the only reason that was shown as listing in the  
22 fact sheet was that staff confidence was low.  
23 Apparently 15 samples weren't enough. We have taken 18  
24 more. Those are all --

25 CHAIRMAN BAGGETT: To delist?

1 MR. ANDERSON: To delist, correct. We would  
2 like to delist. So to delist 15 weren't enough. We  
3 figured 18 more. It is not clear how many need to be  
4 taken.

5 Now, if it is impossible to delist it right now,  
6 we'd ask you that at least the priority be moved from  
7 high to low. It is scheduled on the list for 2003. So  
8 the talk is, yes, we are going to be doing this again  
9 next year. But according to the schedule, the TMDLs are  
10 scheduled for 2003.

11 CHAIRMAN BAGGETT: Part of the consent decree

12 MR. ANDERSON: I believe it is. Nevertheless,  
13 I'm going to have to explain to my city council why  
14 TMDLs are being done for cadmium, which we never found  
15 any, and it's protecting the fish, that really frankly  
16 aren't there in a concrete-lined channel, the perfect  
17 western channel. So it is difficult for me to explain  
18 why we are impaired for cadmium and we're going to spend  
19 tens of thousands of dollars on this TMDL.

20 So if we can't delist, at least move the priorities  
21 lower or change the schedules.

22 CHAIRMAN BAGGETT: Thank you.

23 MEMBER SILVA: Craig.

24 CHAIRMAN BAGGETT: Do you have any of this  
25 data from June? That would have been looked at.

1 MR. C.J. WILSON: Here is the situation on  
2 this water body. We got this data. We evaluated them.  
3 We saw what it showed. There were 15 samples. There  
4 were no exceedances. We talked to the Regional Board  
5 staff about this. Regional Board staff said, well, we'd  
6 like to see three seasons' worth of the data. We are in  
7 the throws of developing a TMDL for this substance. We  
8 get more information. Well, let me back up a step.

9 To list, typically takes less information to list  
10 than it does to delist.

11 CHAIRMAN BAGGETT: Right.

12 MR. C.J. WILSON: And --

13 CHAIRMAN BAGGETT: Which is one of our  
14 challenges.

15 MR. C.J. WILSON: It is a huge challenge. We  
16 can go over it carefully if you would like. It is about  
17 testing the hypothesis and the amount of data that you  
18 need to do that. It is carried forward in a number of  
19 different states, approaches, and we have used that same  
20 approach.

21 CHAIRMAN BAGGETT: Is three years reasonable?

22 MR. C.J. WILSON: I think it is. I think  
23 around 29, 30 samples is reasonable.

24 CHAIRMAN BAGGETT: We have 15 plus the  
25 additional ones since.

1           MR. C.J. WILSON: That's right. And I haven't  
2 reviewed these additional ones. If you admit that into  
3 the record, please do that, and if you think it is  
4 important to do that. We have suggested delisting for  
5 water bodies like Watsonville Slough for oil and grease  
6 where they had zero hits out of 30 samples. We have  
7 done it for Watsonville Slough where they had zero hits  
8 out of 30 samples for metals. That's been the approach  
9 that we have taken.

10           CHAIRMAN BAGGETT: Here we have zero out of  
11 15, plus the additional since last year. So that sounds  
12 like it should be -- I guess the challenge I've got is  
13 we spent all morning, a lot of this morning, on a  
14 similar issue. If something like the Regional Board  
15 staff do all this work developing a TMDL. Region 9, the  
16 courts, you, us, if it is something that we are going to  
17 come back here next year with or next -- say, gee, we  
18 made a mistake here.

19           MEMBER CARLTON: Mr. Chairman, if I might. In  
20 light of the data that has come in which indicates there  
21 may not be a problem, but it is not quite enough data,  
22 the suggestion was made to change the priority, which  
23 would avoid the impetus to move forward with the study  
24 before the complete data set is in.

25           Would that be a situation that is acceptable from

1 the staff?

2 MR. C.J. WILSON: Yes, that sounds  
3 reasonable.

4 CHAIRMAN BAGGETT: So we move it to low priority  
5 and examine the -- they can deal with that.

6 MEMBER CARLTON: At least then we can complete  
7 the data set it feels it is necessary for the delisting  
8 without having the TMDL go forward while the data still  
9 is being done.

10 CHAIRMAN BAGGETT: It looks like if you've got  
11 15 and you've got that much more here in front of us,  
12 you just need to review it.

13 MR. C.J. WILSON: Again, this is a matter of  
14 getting more data into the record. A lot of people are  
15 asking to put a lot more data into the record. We just  
16 couldn't review it all.

17 CHAIRMAN BAGGETT: For today we will avoid  
18 that by moving it to low priority.

19 MR. ANDERSON: Thank you very much. Just one  
20 more comment real quick. The first 15 data points were  
21 over a nine-month period. So that was three seasons, if  
22 there was a question.

23 CHAIRMAN BAGGETT: Now you will have time. We  
24 will get it into the record and next time we are here.

25 MR. ARIKI: Good afternoon, Chairman of the

1 Board, Board Members. Thanks for the opportunity. My  
2 name is Adam Ariki. I am with L.A. County Department of  
3 Public Works. I am the storm water quality manager. I  
4 just handed to you our brief presentation. It was quite  
5 a bit more than that. I trimmed it down in the interest  
6 of time.

7 It seems like the theme that you've been hearing  
8 all along about more data that were not looked at during  
9 this impairment determination process is what I am going  
10 to be hitting on.

11 I heard the phrases that data was submitted in the  
12 eleventh hour. I would like to set the record straight  
13 on that. L.A. County has been monitoring storm water  
14 quality for the last ten years. It is part of our NPDES  
15 permit. We spend roughly a million dollars per year on  
16 collecting data and then reporting all this analysis to  
17 the Regional Water Quality Control Board on an annual  
18 basis as part of our permit requirements. So for  
19 someone to come here and say we got data in the eleventh  
20 hour is ludicrous, to say the least.

21 Having said all that, the first concern of ours and  
22 we have brought this concern before and we feel that  
23 still they are not adequately addressed. We are not  
24 lawyers. We are engineers and scientists. And all the  
25 data that we have submitted to you are supported with

1 tables and graphs. They are in the comments.

2 So first concern that we have is the water quality  
3 criteria for aquatic life in the concrete-lined  
4 channels. The data that was collected was based on  
5 acute criteria. The data simply was used for chronic  
6 criteria. What that means, and I have stated that  
7 before, that there is an exposure of at least four days  
8 to the toxins. You all know that these channels are  
9 designed to carry the flow as fast as possible. So  
10 those bases for determining that this channel are  
11 impaired for metal are not scientific at all.

12 We brought this issue, like I said, up and are  
13 willing to discuss it with whomever, and we base it on  
14 science.

15 The second issue that we have is, and I  
16 brought this up again before, the hydraulic patterns in  
17 water quality. We just heard a little bit of  
18 discussion. Was it 30 samples? Was it three years?  
19 Was it two years? In many cases data collected during  
20 1997, 1998 and 1999 storm water season were used to  
21 determine impairment in the 2002 303(d) list.  
22 Additional data collected under our permit, like I  
23 indicated earlier, three years' worth of data,  
24 1999-2000, 2000-2001, 2000-2002, so it's quite a bit of  
25 data, was not considered at all in the 2002 303(d) list.

1 In some cases it was considered for the addition and the  
2 deletion, some of the data, the new data. But in many  
3 cases for all the ones that were carried over from 1998  
4 we wouldn't even revisit it, which is kind of an  
5 inconsistent pattern of using the data.

6 Last time again I discussed the nondetect. You  
7 know some samples in the laboratory they come nondetect.  
8 So some of the values -- they are assigned values, and  
9 those assigned values were used for impairment  
10 determination. An example of that, and it is  
11 unjustified method, obviously, an example of that for  
12 Coyote Creek for dissolved lead is listed in the 2002  
13 303(d) list due to 19 exceedances; that is what it says.  
14 We investigated the data. Thirteen out of these 19  
15 exceedances, 13, occurred because assumed value of nine  
16 detect laboratory analysis. So it is a little bit out  
17 of whack here. So, you know, we shouldn't consider  
18 nondetect value to constitute exceedance. It is not  
19 conclusive.

20 The other issue that we have with the 303(d)  
21 listing is deficiencies for listing. All water bodies  
22 that have insufficient exceedances should be placed on  
23 the monitoring list until sufficient data and  
24 information for clearing impairment determination are  
25 collected. We are concerned that there is no clear

1 schematic listing and delisting mechanism used to make  
2 consistent monitoring lists and impairment decision. An  
3 example of that, the State Water Resources Control Board  
4 proposes to place Malibu Creek for a total selenium on  
5 the monitoring list because there are insufficient  
6 exceedances, two exceedances out of 21, for impairment  
7 determination. However, Calleguas Creek for nitrate as  
8 nitrogen, Santa Clara River for nitrate as nitrite -- as  
9 nitrogen and Los Angeles River for PCBs that were  
10 originally on the monitoring list that came out  
11 initially due to the same reasoning as stated above and  
12 now moved from the monitoring list to the revised 303(d)  
13 list without adequate explanation. We are not saying  
14 that there isn't enough; we haven't seen it.

15 We did again water analysis and we also found that  
16 several additional water bodies were considered  
17 impaired from the 2002 303(d) list although they showed  
18 marginal exceedances. These water bodies include the  
19 Los Angeles River Reach 1 for dissolved lead, San  
20 Gabriel River Reach 2 for dissolved copper, Coyote Creek  
21 and Ballona Creek for dissolved zinc.

22 We request that the State Water Resources Control  
23 Board reinvestigate the water bodies that showed  
24 marginal exceedances for impairment by placing them on  
25 the monitoring list until sufficient data or evidence is

1 proven. The fact sheets, like I stated earlier, and  
2 this would be the last point that I raise, the fact  
3 sheets which include the basis for impairment decisions  
4 and reasons for listing and delisting are only provided  
5 for water bodies added to or deleted from the existing  
6 1998 303(d) list. This indicates that State Resources  
7 Control Board and the L.A. County Regional Water Quality  
8 Control Board did not consider new water quality data  
9 for some water bodies that were moved from the 1998  
10 303(d) list to the 2002 303(d) list.

11 So we believe that the State Water Resources  
12 Control Board and the Los Angeles Regional Board should  
13 reevaluate the impairment carried over from the 1998  
14 303(d) list into the 2002 303(d) list using the new  
15 water quality data. This would be consistent at least  
16 with the ones that they have added or deleted. We again  
17 investigated some water bodies in the 2002 303(d) list  
18 for which new water quality data was not considered and  
19 found that they could be delisted based on recent water  
20 quality data that we reported in the last cycle. For  
21 example, San Gabriel River Reach 2 for dissolved lead  
22 was carried over from the 1998 303(d) list to the 2000  
23 303(d) list. But our analysis on the data collected  
24 during the 1997-2002 storm water season indicated that  
25 the San Gabriel River Reach 2 for dissolved lead showed

1 only 1.9 percent exceedances and should be delisted,  
2 thus.

3 We also examined shoreline monitoring bacteria in  
4 Santa Monica Bay collected during 1995 through 2000 and  
5 found that several beaches could be delisted due to the  
6 same reasons. These beaches include: Trancas Beach,  
7 Leo Carillo Beach, Cabrillo Beach, Hermosa Beach, Malaga  
8 Cove Beach, Manhattan Beach, Nicholas Canyon Beach, and  
9 Zuma Beach also. Therefore, we recommend that the State  
10 Water Resources Control Board consider the data that was  
11 collected during 1997 through 2002 for all the city  
12 impairments and not only for additions and deletions  
13 from the 1998 303(d) list.

14 I want to reiterate that we spent a lot of money  
15 collecting this data. We spent \$5,000,000 in every  
16 permit cycle, and I would hate to see it go to waste.  
17 This data is available. It was submitted to your staff  
18 on an annual basis.

19 Thank you very much for your time.

20 CHAIRMAN BAGGETT: Thank you.

21 MR. C.J. WILSON: I must apologize for my  
22 earlier statements about the data. When the Regional  
23 Board developed their recommendations, they based it on  
24 the data that was available to them during the time  
25 period when the record was open. They did a very good

1 job on that. Data is continually being collected and  
2 used. It is obviously available to them. Wasn't in our  
3 record. I don't have that information before you, so we  
4 can consider all of that. We can take more time. We  
5 can analyze that information, get it back before you.  
6 It is a very big deal to do that.

7 Another issue that came up during the presentation  
8 is it points to one of the difficulties in this process,  
9 and that is the close calls, when it is very -- when  
10 there is a few exceedances in a data set, you have to  
11 make a call. If half the data or three-quarters of data  
12 exceed the standard, it is pretty straightforward. When  
13 two or three --

14 CHAIRMAN BAGGETT: 1.9 percent.

15 MR. C.J. WILSON: Well, we would not go with a  
16 1.9 percent exceedance rate. That is one of those where  
17 there was additional information that I am not privy to,  
18 that I can't analyze. I just can't comment with respect  
19 to that. When there was a close call, especially in  
20 Region 4 we worked with that Regional Board and we came  
21 up with the approach and reasons to accept those  
22 recommendations.

23 MEMBER CARLTON: One more question for you,  
24 Craig. In your review of data that was available, did  
25 you look at the chronic versus the acute situation?

1           MR. C.J. WILSON: Yes. The acute don't exceed  
2 -- the data didn't exceed the acute values. Those are  
3 maximum values. The chronic are continuous values,  
4 called CMC -- the CCC, criterion continuous  
5 concentration. That is what we looked at and that is  
6 what was exceeded.

7           MR. BISHOP: I just wanted to assure the Board  
8 that we did look at all the data that was submitted to  
9 us. We did make fact sheets and recommendations for  
10 those that either should be added to the '98 list or  
11 removed. We did not make fact sheets for all the data  
12 that we analyzed if it didn't change a recommendation.  
13 That was the approach that was used from all of our  
14 listings.

15           I did notice that they talked about data up through  
16 2002. You should remember that we made our  
17 recommendation for data up through June of 2000 because  
18 that was when we were closing out this listing. There  
19 was new data submitted after that which we then  
20 reanalyzed based on your -- as we submitted to you. We  
21 have used all the data that we had at the time and that  
22 has come in during the --

23           CHAIRMAN BAGGETT: We heard it wasn't  
24 submitted to us, I guess.

25           MR. C.J. WILSON: I have all the data that

1 they have.

2 CHAIRMAN BAGGETT: Is in fact a 1.9 percent  
3 exceedance right for this specific reach?

4 MR. BISHOP: No one knows except for what they  
5 just said.

6 CHAIRMAN BAGGETT: If you made a  
7 recommendation, I hope you --

8 MR. BISHOP: When we made the recommendation  
9 --

10 CHAIRMAN BAGGETT: They came out with 1.9  
11 percent.

12 MR. BISHOP: No, when we made the  
13 recommendation, it didn't come out 1.9 percent. But we  
14 didn't have data up through June of 2002 at the time  
15 that we made our recommendation. That was long --

16 CHAIRMAN BAGGETT: Sounds like it was  
17 provided, though.

18 MEMBER SILVA: I can see what Jon --

19 MR. C.J. WILSON: This is the first I've seen  
20 of this new data. We base all of our recommendations on  
21 what the Regional Board gave us and what they submitted.

22 CHAIRMAN BAGGETT: Is was just represented it  
23 was turned in. It was or wasn't. I guess, now we have  
24 a real challenge.

25 MR. BISHOP: I think the challenge is this was

1 originally -- my recollection is that this was --  
2 originally the cutoff day was May 31st of 2000, was when  
3 we did our original analysis.

4 CHAIRMAN BAGGETT: You, but not for us.

5 MR. BISHOP: Right. And then we submitted all  
6 of that. We did that analysis. We turned it into you.  
7 Then there was additional data submitted to you that  
8 Craig gave back to us later and we reanalyzed to make  
9 sure. We would not have recommended anything for that  
10 1.9.

11 MR. C.J. WILSON: We wouldn't either.

12 CHAIRMAN BAGGETT: You need another 20  
13 people.

14 MR. C.J. WILSON: Twenty-five would be  
15 adequate.

16 CHAIRMAN BAGGETT: This is a massive amount of  
17 data. I can just imagine you spending a million dollars  
18 a year on data, just one county, that is a massive  
19 amount of information.

20 I guess the question to Dave, so what do you do?  
21 Do you take into account our record, including all of  
22 the information that we now have in addition to the  
23 2000? This could be --

24 MR. D. SMITH: EPA believes the states have  
25 the discretion to decide when they close their record

1 for purposes of this. And as I said before, I think it  
2 is reasonable to not consider the things that just very  
3 recently came in just in the interest of maintaining an  
4 orally disciplined process. We know we do this  
5 repeatedly and as I said very soon.

6 So we will look to see how you frame the record,  
7 and we will look at whatever you send us. But we would  
8 discourage from necessarily including every single thing  
9 you have heard because -- put it this way: I think that  
10 penalizes people who thought that when you closed the  
11 record before that you really meant it. And in some  
12 ways it rewards the people who can most easily keep  
13 track of these proceedings.

14 CHAIRMAN BAGGETT: We have a stack of data on  
15 a river which is coming up on Region 1, because we said  
16 we would take data until June of 2002. But at Regional  
17 Boards, this is first I've known, cut it off two years  
18 prior to that.

19 MR. C.J. WILSON: We sent out -- we got new  
20 information in June. We sent it out to the Regional  
21 Boards. And when we got new information they evaluated  
22 that and got it back to us. And we factored it into our  
23 analysis at that point. A lot of this data is up  
24 through last month. Frankly, we just saw it recently.

25 CHAIRMAN BAGGETT: In our record it is -- we

1 cut it off June of 2002, correct?

2 MR. LEVY: Mr. Chairman and Members of the  
3 Board, Michael Levy, again. Originally the process  
4 called for a solicitation by Regional Boards from May  
5 2001. Jon Bishop misspoke. So the Regional Boards had  
6 sent out solicitation on behalf of the State Board  
7 within each region, and that was supposed to be cut off  
8 from May 2001.

9 Subsequently, the State Board asked that the record  
10 be reopened to accommodate everyone through June of  
11 2002. That is where the record was closed.

12 CHAIRMAN BAGGETT: That is an additional year  
13 and a half of data, which given all the litigation and  
14 all the raised import of TMDLs over the last three  
15 years, the great interest creating data and  
16 understanding this is based on data from both sides. So  
17 all of a sudden we have inundated ourselves with another  
18 year and a half of data, and we are being asked today as  
19 a Board to adopt individual actions. And I am quite at  
20 a loss on this one, personally.

21 The engineers here have a different point, but I am  
22 just -- we're trying to determine if, in fact, this  
23 analysis that we are just presented by L.A. County is  
24 accurate and information is, in fact, in the record that  
25 shows a 1.9 percent exceedance, for example. Then it

1 seems like a no-brainer to delist. But it sounds like  
2 we don't even know --

3 MR. C.J. WILSON: This data, the newer stuff  
4 beyond June, was not submitted until recently.

5 CHAIRMAN BAGGETT: But it says 1997 to 2002.

6 MR. C.J. WILSON: We analyzed everything that  
7 we had in our record. And I can't say with specificity  
8 on this data set if we had this in our record, but  
9 everything we had we provided to the Regional Boards.  
10 They got their analysis back to us. And many of our  
11 recommendations changed based on that new data.

12 CHAIRMAN BAGGETT: No one can answer the  
13 question on whether -- that's the problem I have here.  
14 That is --

15 MR. ARIKI: Can I throw in a word? What I  
16 said, I said the data that was not considered is  
17 1999-2000, 2000-2001 and 2001-2002. We submit these  
18 data to the Regional Water Quality Control Board on an  
19 annual basis in an annual report. We also submitted a  
20 five-year, under the 1996 permit, comprehensive one  
21 document of all the data to the Regional Water Quality  
22 Control Board.

23 So if even they made a cutoff date of June 2000,  
24 you should have at least two more years of data that  
25 should have been used in the analysis.

1 CHAIRMAN BAGGETT: That is what, I guess, I'm  
2 trying to get to.

3 MR. BISHOP: I think I can answer that. It  
4 seems to me on what Adam said, correct me, Adam, if I am  
5 wrong, that you submitted it under the annual report  
6 not as part of the solicitation for the 303(d) list?

7 MR. ARIKI: Right. Part of the annual report  
8 for purpose of the 303(d) list or anything that the  
9 Board, Regional Board, deemed necessary.

10 MR. BISHOP: Did you submit it under the  
11 solicitation for the 303(d) list?

12 MR. ARIKI: Did you solicit it for the 303(d)  
13 list?

14 MR. C.J. WILSON: Yes.

15 MR. BISHOP: We sent a letter to every one of  
16 our dischargers.

17 MR. ARIKI: Yes, we did. T.J. is saying we  
18 did.

19 MR. BISHOP: It didn't include the recent  
20 data, though?

21 DR. KIM: That's right.

22 MR. BISHOP: That's the issue.

23 MEMBER KATZ: I would like you and your  
24 colleague both down here so we can understand. He is  
25 saying something a little different than you are saying,

1 even though we've gone through this issue with the L.A.  
2 Regional Board before.

3 CHAIRMAN BAGGETT: If the stakes weren't so  
4 high, I guess we would ignore this whole thing. But the  
5 stakes are high here; there is a lot of money, there is  
6 a lot of time and there is a lot of litigation, a lot of  
7 our staff's time which we are fairly protective of as  
8 everyone in this room saw. I think it is important to  
9 sort this out. If we are going to be right back here  
10 doing this again, especially, we have to figure out a  
11 process. I am not placing blame anywhere. I'm trying  
12 to understand what we are making this decision on and  
13 what we aren't.

14 MR. ARIKI: Trust me. I am not -- we are not  
15 placing the blame.

16 MEMBER KATZ: If I can ask you to have your  
17 colleague identify himself and repeat the statement he  
18 just made.

19 DR. KIM: My name is T.J. Kim. I am with L.A.  
20 County Public Works.

21 MR. ARIKI: For the record he is Dr. Kim; he's  
22 modest.

23 MEMBER KATZ: If that helps answer this  
24 question, great.

25 MR. ARIKI: It does.

1           MEMBER KATZ: When you were standing over  
2 there you seemed to indicate that the new data was or  
3 was not submitted as part of the report or in response  
4 to the 303(d) letter.

5           DR. KIM: Regional Board solicited data for  
6 the 303(d) list process in 2001.

7           MEMBER KATZ: Stand forward and speak into the  
8 mike, don't look at him because we can't hear you.

9           DR. KIM: I try to remember what I did. There  
10 was 2001, May 2001, I believe. At that time we  
11 collected all available information, at that point. And  
12 we submitted it to the Regional Board for their  
13 analysis. And then since then we have collected storm  
14 water information for, I believe, 2000-2001 and  
15 2001-2002 storm season, and then we submitted such  
16 information as part of our annual written reports under  
17 the NPDES permit to the Regional Board.

18           MEMBER KATZ: So then the newer data was not  
19 submitted in response to the 303(d) list inquiry, but  
20 was included in an annual report you gave to the Board,  
21 to the Regional Board?

22           DR. KIM: That is correct.

23           MR. ARIKI: As part of the NPDES permit.

24           DR. KIM: One thing I noted when I evaluated  
25 the data used by the Regional Board was that many times

1 they didn't include the data we submitted for '99 and  
2 2000 storm season, although we submitted such data as  
3 part of this process. That is something missing  
4 although we submitted as part of this process.

5 Mainly they relied on the data from '97-98 storm  
6 season and the '98-99 storm season. But the problem is,  
7 I believe, '97 and '98 storm season was El Nino year, so  
8 we had a lot of storm events. That kind of skewed all  
9 the data sets, and we tend to have a lot of it, the  
10 impairment. But if we were to include the longer period  
11 of time of data, then our analysis shows that we can  
12 delist a lot of water bodies. Actually, that is the  
13 point we were trying to make. So because of El Nino  
14 season in '97-98 storm season we had unfair impairment  
15 in the water bodies.

16 CHAIRMAN BAGGETT: I think we understand.  
17 Again, it is not the fault, especially of the Regional  
18 Board. We know you are buried. But the data --

19 MR. BISHOP: I think that the issue is that  
20 this process has gone on for almost a year and half, two  
21 years longer than it was expected, and the point where  
22 things get cut off, there is data being collected and  
23 submitted from two or three weeks ago. There is a point  
24 where you can no longer analyze that.

25 CHAIRMAN BAGGETT: But our notice cut it off

1 in June of 2002.

2 MR. BISHOP: And all data that was submitted  
3 by that was analyzed. It did not show a 1.9 percent  
4 exceedance. I can guarantee that because we would not  
5 have made that recommendation to you. It may be that  
6 when you add in 2001 and 2002 storm season, which would  
7 have been --

8 CHAIRMAN BAGGETT: Before June of 2000.

9 MR. BISHOP: Would the data have been to  
10 Craig? I don't believe it would have been or we would  
11 have analyzed it.

12 MR. C.J. WILSON: I have asked two of my staff  
13 to go look for all the submittals related to this that  
14 we have, and we will bring them down here if we can find  
15 them.

16 CHAIRMAN BAGGETT: We aren't going to be able  
17 to finish this process and adopt this today if we open  
18 -- keep these kinds of things open. I am trying to  
19 remedy this in the future because there is some concern  
20 here about the process. If we can really delist more  
21 than -- we aren't having a problem finding more things  
22 to list, obviously. But if there is some that they have  
23 results and problems, it would be nice to get credit for  
24 trying and spending all that time and money trying to  
25 fix these.

1           MR. ARIKI:  If it would be of any help, here  
2           are the tables.

3           CHAIRMAN BAGGETT:  At this point that finishes  
4           all the regions but the North Coast, and we've got a few  
5           loose ends here.  I would be willing to straighten it  
6           all out at the very end.

7           MEMBER SILVA:  Let's do them at the end.

8           CHAIRMAN BAGGETT:  We've still got the Region  
9           2 issue.  I want to deal with this Hawiee Reservoir  
10          briefly and a couple others.

11          MR. LEVY:  Mr. Chairman, Members of the Board,  
12          Michael Levy, again.  Since staff is going up to collect  
13          the data, why don't we put further discussion of this  
14          water towards the end of the calendar.

15          CHAIRMAN BAGGETT:  We are going everything  
16          towards the end.  If you want to have some information,  
17          they can --

18          MR. LEVY:  We can clear it up and know exactly  
19          where we are not.

20          Thank you.

21          CHAIRMAN BAGGETT:  With that, last region,  
22          North Coast.  Again, it's getting late.  We have 20  
23          cards, and I think they are all on the same basic issue.  
24          If someone's made the comment already or made it before  
25          you, just say you agree.  You don't have to reiterate

1 the whole argument again. We can figure it out.

2 Sally French, Mattole River watershed and then Mary  
3 Etter.

4 UNIDENTIFIED AUDIENCE MEMBER: We are here as  
5 a group.

6 CHAIRMAN BAGGETT: You are up.

7 This is all information that is already in the  
8 record, I assume.

9 MR. MCWHORTER: You have seen the map.

10 MR. C.J. WILSON: It is in the record.

11 CHAIRMAN BAGGETT: You have to talk into the  
12 microphone.

13 MS. ETTER: I am Mary Etter. I am from  
14 Honeydew, which is a very rural community in Humboldt  
15 County. And again, this is a map of the Mattole  
16 watershed. The watershed comprises just a little less  
17 than 200,000 acres. And the mass which is west, I don't  
18 know if it is the way the map is held there, but the  
19 west area is the Pacific Ocean.

20 In 1996 Mattole learned that Mattole watershed was  
21 going to become or going to be nominated to become a  
22 sensitive watershed. At that time landowners banded  
23 together and formed what is known as the Mattole  
24 Landowners for Sensitive Watershed Management. This is  
25 a group of landowners who oppose excessive regulations

1       which they consider unnecessary regulation. The light  
2       green in the map, which you noticed was the majority of  
3       the map, represented the property owned by those  
4       opposing more regulation. The dark green represented  
5       the government owned properties. And the white  
6       represented four groups. That which supported more  
7       regulation. That which took a neutral position. That  
8       which we could not contact, but said could not contact  
9       and those that we did contact said they opposed but we  
10      did not receive written petitions back stating that they  
11      opposed it.

12             At the time this map was made 73 percent of the  
13      land was owned by people that opposed more regulation.

14             CHAIRMAN BAGGETT: Let me correct that.  
15      Mattole is already listed for sediment. There is  
16      nothing new happening. It is already on the impaired  
17      water body list. There is nothing new we can do.

18             MS. ETTER: That is correct.

19             CHAIRMAN BAGGETT: You are proposing to take  
20      it off?

21             MS. ETTER: I am proposing that you take it  
22      off. My point in going through this whole thing was to  
23      just show you what the sentiment of the landowners in  
24      the area is. Also, we had taken this map to the Board  
25      of Forestry and after the Board of Forestry had studied

1 this for two years, they made the decision to veto it.  
2 It was a six to two vote. I guess I would hope that the  
3 Water Quality Board Members, EPA Board members would  
4 respect and comply with the decision of another  
5 government agency which is --

6 CHAIRMAN BAGGETT: It is a totally separate  
7 agency.

8 MS. ETTER: I understand that. But I did hope  
9 that it would have some weight.

10 CHAIRMAN BAGGETT: Let's see, if the Board of  
11 Forestry did this, then maybe we should do --

12 MS. ETTER: Again, I am referring to what we  
13 consider excessive regulation.

14 I have gone to numerous TMDL workshops in the  
15 North Coast watershed assessment workshops for our area.  
16 As I understand it, the TMDLs are to be based largely  
17 upon the information in the assessment programs for each  
18 area. There is a vast difference in the geological  
19 information between these two documents. It doesn't  
20 seem possible to me that the TMDLs for our area could be  
21 set with any accuracy considering this difference. I  
22 had hoped to have a detailed list of all the differences  
23 so I could point each one out. But as you know, the  
24 assessment program for our area has not been approved by  
25 the governor yet.

1           And so last night at 10:00 the people who wrote the  
2 program actually printed out a copy, or two copies for  
3 me, so I can bring them here today. I do have them with  
4 me. I could give you one even though the governor  
5 hasn't signed it yet. But I was going to point out just  
6 a few things that were in there to show that I feel that  
7 the 32 percent TMDL calculation for natural causes is  
8 incorrect. We feel it should be much higher, and I base  
9 that upon the information in here.

10           On Page 29, landslide associations, 68 percent of  
11 all the debris slides and debris flows that were  
12 observed are adjacent -- pardon me, are not adjacent to  
13 roads. So I will say that again, maybe I didn't say it  
14 clearly. Sixty-eight percent of all debris slides and  
15 debris flows that were observed are not adjacent to  
16 roads. And out of this 68 percent, 77 percent are  
17 believed to have produced sediment that has gone into  
18 the streams.

19           CHAIRMAN BAGGETT: What we need for today, if  
20 you want to delist it you have to show us studies that  
21 show there is less sediment or the problem, not where it  
22 is coming from; that is not the issue here. It is  
23 actual sediment in the river. You have sites -- this  
24 study is not in the record.

25           MS. ETTER: But it is sediment --

1                   CHAIRMAN BAGGETT: Right. So that is what --  
2 if you've got any information for any of your -- that is  
3 what we need.

4                   MS. ETTER: It seems to me that this is what  
5 you wanted, but should I continue a little bit or not?

6                   CHAIRMAN BAGGETT: You're well over your  
7 time.

8                   MS. ETTER: One last thing. This was a study  
9 that was done called Negative Map Channel  
10 Characteristics. And negative map channel  
11 characteristics are the features that indicate sediment  
12 production, sediment transport or sediment depositions.  
13 And in 1984 34 percent of all blue line streams were  
14 occupied by negative map channel characteristics. In  
15 2000 only 20 percent of all blue line streams were  
16 occupied by negative map channel characteristics.

17                   Now, to me, if nothing else, this shows a  
18 significant improvement, and this was in this study.

19                   Well, I guess I will just close by saying that a  
20 majority of landowners oppose this and we do not think  
21 arbitrary findings -- our hope that something so  
22 important to us would not be based on arbitrary findings  
23 that are foundational.

24                   Thank you.

25                   CHAIRMAN BAGGETT: Craig, do you have any?

1 MR. C.J. WILSON: He have evaluated all the  
2 data that was submitted by this group and included a  
3 fact sheet in our staff report. It is my understanding  
4 that EPA has approved the TMDL for the Mattole River for  
5 sedimentation. That is my understanding -- established  
6 it, excuse me. The implementation plan hasn't been in  
7 place yet. So those are the facts on this water body.  
8 State and Regional Board staffs still agree that this  
9 water should be listed.

10 CHAIRMAN BAGGETT: TMDL is already --

11 MR. C.J. WILSON: Established by EPA.

12 MS. ETTER: Previously we had written a letter  
13 asking if we could submit information concerning this  
14 assessment program for our area since it wasn't -- the  
15 final draft hadn't been approved. I don't think we  
16 received an answer back. But, again, we are hoping that  
17 when it is finalized that we can do that and point out  
18 the differences.

19 CHAIRMAN BAGGETT: Take that. We have a few  
20 other folks from the North Coast. Let's put that under  
21 advisement.

22 MS. ETTER: Thank you.

23 MR. MCWHORTER: We have five feet of water --

24 CHAIRMAN BAGGETT: Identify your name.

25 MR. MCWHORTER: Sterling McWhorter, Humboldt

1 County.

2 We got five feet of water in December in Mattole  
3 Valley, and it is still there. Not everything is slid  
4 down the hill. The river's actually in better shape  
5 because of all that rain and the splinters of the river  
6 actually make a pretty nice channel again. The process  
7 -- you guys definitely need to go through a process of  
8 getting these rivers delisted. You're spending billions  
9 of taxpayers' dollars on watersheds that don't need the  
10 money spent on them.

11 The Mattole is low. It is on a low list. It is  
12 not high; it is low. And because it is one of the most  
13 pristine rivers in California, that is why EPA is  
14 starting there, because they want to keep that. Because  
15 they don't want it to be logged again like it was in the  
16 1960s, and it won't be. Forest Practices Act won't  
17 allow that and the landowners in that watershed are not  
18 going to do that again. We have learned from the  
19 mistakes. We need a process to get delisted, to reduce  
20 our sediment from 68 percent of man made -- we don't  
21 produce 68 percent of the sediment that the Regional  
22 Board is saying that we do. It is computer model based,  
23 and what you put in there is not necessarily God's word.  
24 We will be back; you're going to have to do it again.

25 CHAIRMAN BAGGETT: We will be right back here

1 in less than 24 months. And I think that is where we  
2 need to get information. For us to try to decide this  
3 kind of information today, I think, will be challenging.

4 MR. MCWHORTER: I didn't expect it to be  
5 delisted today. We have to follow up before we --

6 CHAIRMAN BAGGETT: We appreciate because that  
7 is what we need, is people out there. It is a big state  
8 as you know, so it is a lot of water bodies. And we  
9 appreciate your taking the time to come down.

10 Sally French.

11 MS. FRENCH: My name is Sally French. My  
12 husband and I have a ranch in the middle part of  
13 Mattole. I won't take much time, but since I came this  
14 far I'm going to say my piece.

15 CHAIRMAN BAGGETT: I agree.

16 MS. FRENCH: Basically we brought with us  
17 copies of the NCWAP report. And in that report it shows  
18 that the improvements in the Mattole from 1984 to the  
19 year 2000 are incredible. Even the aerial photos show  
20 the difference. And we think that the amount of money  
21 that is spent on TMDLs when they are not needed, and we  
22 have -- we feel that overall we have not been given the  
23 ways and the means to prove that a lot of the  
24 environmental reports which we believe have been skewed,  
25 in our hearts we believe some of those reports are

1 skewed purposely. We believe that it is not a fair  
2 situation. There are those of us that are, of which are  
3 three, represent the ranches in this area.

4 And the biggest thing that the NCWAP report shows  
5 is that the only really big thing is the lack of water  
6 flow as far as the impairment of fish in the low months  
7 in August. And it is shown right there in that report  
8 that that is happening because of development. And what  
9 is happening is that those of us that still own large  
10 land holdings in the Mattole are fast losing hope and  
11 are not sure that we are going to be able to continue to  
12 hold onto and not make everything worse by developing  
13 our properties as well. There is nothing in Humboldt  
14 County laws, it seems, that keeps the development from  
15 happening beyond a certain amount.

16 Every time that a land is broken up, every person  
17 that moves onto that land taps water. And so that takes  
18 water from the river. And we think that the whole  
19 process needs to be looked at, and obviously being here  
20 today has sort of spotlighted that, that the whole  
21 process needs to be looked at more closely.

22 I would like to submit just a quick letter from  
23 another rancher in the Mattole, Tom Phelps, and he says  
24 my primary concern is that the TMDL model does not take  
25 normal erosion into proper account. And that is what

1 they were saying, too. And I would just reiterate that  
2 if you've not been in the Mattole, you cannot imagine.  
3 We are in the heaviest rainfall belt in the world. In  
4 Honeydew and in parts of our watershed we get regularly  
5 about 150 inches a year. Right where I live we get 90.

6 If you have some concept of what that does to  
7 anything, you would get the idea that most of what is  
8 going in that river is natural. And there are some road  
9 problems, and those road problems have to do with  
10 development as well. Every time we add layers of  
11 regulations and make life more difficult for ranchers,  
12 we lose more ranchers.

13 Raising arbitrary TMDLs serves not science based  
14 purpose. The river is in great shape already and heals  
15 itself very well from landslides, floods, et cetera.  
16 It's been doing it forever.

17 Secondly, I believe that it is important for the  
18 Board to recognize the significant conflicts of interest  
19 that exist within the efforts to get TMDL listing for  
20 the Mattole. The TMDL backers make their livings on  
21 stream restoration, quote-unquote, projects. An  
22 additional layer of regulation opens the door to more  
23 surveys, more proposals and more litigation. Although I  
24 would insert more taxpayer money.

25 This is much the same coalition that unsuccessfully

1 pushed the sensitive watershed designation with the  
2 Board of Forestry. Please keep this fact in mind when  
3 considering this matter. Without a doubt the biggest  
4 threat to the river is loss of summertime flow. And he  
5 goes on to say that each new family that moves in taps  
6 another spring or puts another pump in the river. So  
7 there needs to be some address, of course, to that  
8 problem which is not one that is your Board's situation.  
9 But that is not -- doesn't have to do with  
10 sedimentation, doesn't have to do with pollutants. It  
11 has to do with regulations of another type entirely.

12 Thank you.

13 CHAIRMAN BAGGETT: Thank you.

14 That sounds like we have enough information for the  
15 next round, providing we get a copy of the report. We  
16 won't open this. We will keep it. We appreciate your  
17 making the trip.

18 MR. MCWHORTER: Thank you.

19 CHAIRMAN BAGGETT: Alan Levine, Coast Action  
20 Group, and then Craig Bell. Try to give you guys a  
21 heads up.

22 MR. LEVINE: My name is Alan Levine. I  
23 represent the Coast Action Group, Point Arena,  
24 California. Distance away.

25 I want to say Craig's done a really good job and

1 his assistants have worked hard too and as you do also,  
2 and so do I. I want you to know that I am a TMDL  
3 backer. And I don't make a living. There is no money  
4 in this for me. But I know a lot what's going on in  
5 TMDL. I have read -- rather than the Mattole and the  
6 other rivers I am going to talk about now, I have read  
7 680, plus another a hundred administrative records on  
8 timber harvest plans to the current date. I am dealing  
9 with them, and I can see what is happening, and I have  
10 some experience from which I speak.

11 I submitted additional information to the file on  
12 the listings of the five or six rivers for temperature  
13 and I want you to know I support the listings, but there  
14 is more than sufficient evidence of what I just learned  
15 today would be termed acute and chronic of nature in  
16 that the measurements taken over from four to seven  
17 years, depending on the rivers. There are a lot of  
18 hits, many in the lethal range. I just wanted you to  
19 know there is a lot of scientific information to back up  
20 this evidence of what the ranges are.

21 There's been some complaints that the thresholds,  
22 like 14.5, aren't significant. But I want you to know  
23 the number of hits in the range of near sublethal and  
24 lethal are significant. It is not just a small number;  
25 it is about half of all the hits in one river. I think

1 one was Redwood Creek -- not Redwood, Ten Mile -- excuse  
2 me, Mad River, all the hits were lethal for a long  
3 period of time, not just one day; MWAT, mean weekly  
4 average temperature.

5 With coho when you get to the range of about 17  
6 degrees or 62 Fahrenheit, studies have shown, other than  
7 Sullivan, Ambrose and Hines and also Hardwell Welch,  
8 shows that 90 percent of coho there is 9 percent absence  
9 when you get to temperatures of 17 to 18 degrees, there  
10 is almost complete absence. And many, many of these  
11 temperatures were in those ranges. I don't think I need  
12 to go through all the problems that temperatures cause  
13 with fish.

14 I will let you know, though, that when you have  
15 streambeds that are filled with sediment, and in the  
16 case of the Mattole, where a lot of water is running  
17 subsurface in the summer that leaves very little water  
18 on the surface for fish, you have -- your holes are  
19 filled in and the habitat is reduced and the fish are  
20 either subject to long-term lethal or sublethal stresses  
21 and/or forced into areas where they congregate and  
22 subject to predation and disease.

23 I want to say another thing about what the listing  
24 does for me. When it says listed 303(d) in a timber  
25 harvest plan, it puts me in a better position to

1 negotiate for better amendments or modifications or  
2 mitigations in the THP. And it also makes CDF in their  
3 initial review and their subsequent reviews do a better  
4 job of mitigating the plan on their own, even if I  
5 wasn't there to say anything. There is direct benefits  
6 just from the listing before you even get to the TMDL.  
7 And I think that is worthwhile. I think that you should  
8 know that there are these benefits. And at that time  
9 that point you start making progress to meeting water  
10 quality values that needed to be protected and  
11 beneficial uses.

12 I want to leave with you by saying that the harder  
13 -- in the area of timber harvest plans the harder you  
14 push on CDF to do a good job, the better job they will  
15 do and TMDLs are another way to get there.

16 Thank you.

17 CHAIRMAN BAGGETT: Thank you.

18 Craig Bell and then Vivian Bolin.

19 MR. BELL: Yes. Chairman Bagget, Members of  
20 Board, I thank the opportunity to make comment. My name  
21 is Craig Bell. I live in Gualala, California. I am  
22 here representing the Salmon Restoration Federation and  
23 the Northern California Association of River Guides, and  
24 today we join with the Sierra Club, PCFFA, Cal Trout and  
25 Trout Unlimited in supporting a temperature listing

1 addition for the Gualala big river, Russian, Mad, Ten  
2 Mile Rivers and Redwood Creek. We do support Coast  
3 Action Group's detailed comments. I don't need to go  
4 into -- they detailed the MWAT exceedances in each  
5 stream. This should be a much simpler decision for this  
6 Board than the 1.9 percent exceedance when you are  
7 dealing with other subbasins.

8 Temperature monitoring is very straightforward. It  
9 is done by computer readable devices and the cited  
10 studies are supported with thresholds. And coho salmon  
11 are sort of the watch species in these rivers, and  
12 temperature is probably the most important parameter for  
13 them. Many of these rivers are down to one or two  
14 subbasins that have coho remaining. And I would equate  
15 it to an engine that is operating on one or two  
16 cylinders as opposed to eight or ten or 12 cylinders.  
17 We cannot expect recovery to come from just two  
18 subbasins out of whole systems and even parts of two  
19 subbasins out of whole watersheds that now support coho.  
20 We cannot expect that to lead to recovery of coho salmon  
21 and beneficial uses in whole watersheds.

22 Main stem rearing areas, after hot water  
23 contributions added up are considerably reduced, and we  
24 are now down to shifts in species composition from  
25 salmonids to stickleback and roach. Temperatures are a

1 real problem; they create thermal barriers which prevent  
2 up and down migration of fish. Stressed fish are much  
3 more vulnerable for predation, and they arrive in the  
4 ocean in a smaller size, much less able to complete.

5 These listings will be an important component in  
6 the short- and long-term recovery planning under CSEA  
7 and ESA. And the goal is to expand the suitable  
8 temperature ranges.

9 I can say that the fishing and environmental  
10 community will work hard to bring needed restoration  
11 resources to landowners in the state to address  
12 implementation plans.

13 Thank you very much. We ask that you support your  
14 staff.

15 CHAIRMAN BAGGETT: Thank you.

16 Vivian Bolin and Don McEnhill.

17 MS. BOLIN: I am Vivian Bolin, watershed  
18 conservation director with the Pacific Coast Federation  
19 of Fishermen's Associations. And I fished commercially  
20 for salmon out of Fort Bragg from 1974 through 1994. In  
21 those days we started April 1st and fished all the way  
22 through September. Worked on the boat all summer. Went  
23 up and down the coast. If you go to Fort Bragg in July  
24 now to Noyo River it's practically a ghost town because  
25 of the ocean closures for sport and commercial fishing.

1           We support the staff in their recommendation and we  
2 support the comments of Coast Action Group, the written  
3 comments, too, that were submitted to you. Every year  
4 we give up ocean harvest that would be available to us  
5 in order to send more fish back to the rivers. The  
6 North Coast rivers, they typically run into a lack of  
7 deep pools and cold enough temperatures to survive for  
8 especially the coho who have to live in the river for a  
9 year as babies. And I'm sure you've heard about some of  
10 the high temperature problems that have been very  
11 extreme lately. But they've been ongoing for years.

12           So we have given up coho harvest since the mid  
13 1980s, well before the listings. And we also gave  
14 hundreds of dollars each year with our permits to the  
15 salmon stamp fund for restoration before we even find  
16 out what kind of a season we would get for the year.

17           I support the dedicated work of many restoration  
18 workers who'd rather be fishing.

19           And thank you for your time today.

20           CHAIRMAN BAGGETT: Thank you.

21           And Gregory Broderick.

22           MR. MCENHILL: Chairman Bagget, Members of the  
23 Board, my name is Don McEnhill with Russian RiverKeeper.  
24 I am also here representing my friend and colleague,  
25 Brenda Adelman, who did end up with jury duty today. We

1 have two letters. The comments are almost exactly the  
2 same. So I am just going to read one of the two.

3 First off, we support the staff and State Board's  
4 listing of temperature for the Russian River at five  
5 North Coast rivers. We support Alan Levine's comments  
6 as well as Craig Bell's on that.

7 We also support the listing of the Laguna De Santa  
8 Rosa for dissolved oxygen and its removal from the TMDL  
9 completed list. We strongly support this listing.

10 Regarding the placement of Laguna De Santa Rosa on  
11 the monitoring list for nutrients, we would certainly  
12 prefer that it be on the full list, but after  
13 consultation with Craig Wilson and Region 1 staff, we  
14 feel comfortable enough to support the monitoring  
15 listing with certain reservations. It is understood  
16 that Region 1 doesn't have the money to undertake this  
17 study regarding nutrients in the Laguna. The City of  
18 Santa Rosa has stepped forward to offer funding, and we  
19 certainly applaud those efforts. We certainly have a  
20 lot of reservations with the dischargers controlling the  
21 study.

22 In our consultations with Craig and the Region 1  
23 staff, we recommended to them and we strongly urge that  
24 the study include -- any study of nutrients include  
25 phosphorous as a lending nutrient, but also a committee

1 of stakeholders be established to allow many inputs into  
2 the studies, the monitoring programs, the study designs  
3 and that they be jointly overseen by the Regional Board  
4 and by the City of Santa Rosa. A similar process took  
5 place with regard to nutrients earlier, and there still  
6 is a nutrient problem. So we argue for more  
7 transparency in any effort by Santa Rosa to undertake  
8 the nutrient studies.

9 We also ask that the test samples be processed and  
10 analyzed by an outside impartial lab in order to solve  
11 this problem.

12 And thank you for your time.

13 CHAIRMAN BAGGETT: Thank you.

14 Gregory Broderick.

15 UNIDENTIFIED AUDIENCE MEMBER: I don't have  
16 anything new.

17 CHAIRMAN BAGGETT: With that, we have our  
18 final suite here. Dr. Kathleen Sullivan, et al. I  
19 guess it looks like et al.

20 DR. SULLIVAN: Thank you, Chairman Bagget, and  
21 the Board. My name is Dr. Kathleen Sullivan. I am a  
22 researcher who has spent my career working on the  
23 effects of logging and various management activities on  
24 the physics of stream temperature and also on the  
25 biology of stream temperature. I am here to comment

1 today -- I now live in Humboldt County, and I am here to  
2 comment today about the water temperature criteria; that  
3 is after all the basis of temperature listing. And part  
4 of my work, along with some colleagues of mine, in the  
5 year 2000 published a report that forms the basis for  
6 some of the temperature criteria for justifying some  
7 selection of temperature criteria for rivers in this  
8 area.

9 And like any good scientist, I have -- in our  
10 report we have some caveats about the use of that  
11 information for temperature criteria. So I just wanted  
12 to make sure that the Board has some of the benefits of  
13 those caveats as wells.

14 I would like to -- and I am not here to comment on  
15 the particular listing of any river that may have been  
16 put on the list for that.

17 First of all, I'd just like to emphasize and put  
18 some context on what the temperature criteria are  
19 because they are important. And I do agree with my  
20 previous speakers, that temperature is very important to  
21 salmonids. It is important to all fish, particularly  
22 important to salmonids. And coho are probably the most  
23 sensitive of the species for a variety of reasons I  
24 won't go into.

25 Just to create some context, the effects of

1 temperatures are determined by the magnitude of  
2 temperature in relationship to the duration of exposure  
3 of the fish. This is true for all fish, and each has a  
4 range of temperature whereby they perform very well in  
5 the middle of their range. And as they drop off colder  
6 or warmer from their range, they perform less well.

7 Salmon will die when they are exposed to  
8 temperatures of 30 degrees which for you who aren't  
9 adjusted to centigrade is about 86 degrees if they are  
10 exposed to even a few minutes. In the range from about  
11 24 to 30 degrees or 75 to 86 degrees mortality is  
12 function of the duration of exposure. So you can get  
13 mortality, but you have to have exposures of probably  
14 hours to even days to get that.

15 Salmon have mechanisms to cope for short-term  
16 exposures and potentially adverse temperatures. There  
17 does seem to be kind of a true, almost biological  
18 threshold for temperature at about 22 C or 72 degrees  
19 Fahrenheit, especially for coho. In that range of  
20 temperature response you tend to see behavioral changes,  
21 stress measures and competition as they come together.  
22 That is a pretty clearly recognizable boundary.

23 The research that we engage in, we were really  
24 trying to explore the chronic. Those would all be sort  
25 of acute effects, especially in the 24 degrees and

1 above. The work that we were doing, we are trying to  
2 explore the chronic effects of what happens to fish when  
3 they are in a stream over a long period of time during  
4 the rearing months from about April to about October in  
5 our research. So we focused in on growth effects during  
6 that period of time. Now it is important to recognize  
7 that in the mid ranges of the temperature range for fish  
8 the temperature actually becomes an asset, helping them  
9 to grow better. In fact, what we really would like to  
10 see in rivers is temperatures that are falling near that  
11 optimal for them in their range.

12 We used research conducted over the last 35 years  
13 to develop an objective, quantitative approach to  
14 predict the effects of temperature on the growth. We  
15 corroborated our model against observed growth of fish  
16 in streams and with very good results, giving us  
17 confidence. We then used our model to predict growth of  
18 fish given the temperature measured in the streams. The  
19 way we came up with a number that is actually used as  
20 the threshold value in the objectives standards is we  
21 said we don't really know how to pick the right number,  
22 so what we will do is find the best temperature for  
23 fish, predict their growth as if the streams spent all  
24 of its time at the best temperature, the most optimal,  
25 and then we will calculate the growth that would occur

1 in the regular stream with its particular temperature  
2 profiles. In some cases as previous speakers have said  
3 they may be very warm and other cases they could be cold  
4 or somewhere.

5 We calculated the difference between the predicted  
6 growth at the optimal temperature and the optimal  
7 temperature. So it is really -- what we call that is  
8 reduction from maximum growth due to the temperature.

9 So I would like to note that the 14.86 degree MWAT  
10 temperature comes from arbitrarily picking a 10 percent  
11 growth loss from the optimal conditions. I emphasize  
12 that this condition is a very, very good condition. You  
13 would probably not be able to detect this using  
14 experimental -- even at experimental level population  
15 tests. So it is a very, very safe number. I should  
16 note that in our evaluation we found that no stream had  
17 optimal temperatures all of the time for the fish from  
18 the time they emerge from the gravels to the time they  
19 meet the winter months. And that about the best stream  
20 we saw had a 5 percent growth reduction. So the 10  
21 percent limit is, in fact, should be noted as an  
22 important caveat to note that, in fact, it is a very  
23 good number for fish and would be kind of difficult to  
24 actually ascertain that there is an impairment from some  
25 sort of an experimental methodology.

1           It is a good criteria, though, for recognizing we  
2 can at least model the impact, but we wouldn't  
3 necessarily be able to identify it.

4           The only biological threshold is that lethal --  
5 that temperature around 22 degrees where we see changes  
6 in behavior. I would like to comment that while growth  
7 is an important aspect of their life and it is also not  
8 particularly clear from the scientific research how to  
9 exactly pick an upper criteria number. Is it 10  
10 percent? Twelve percent? Thirteen or 14 percent?  
11 There is no scientific research at this time that would  
12 actually allow you to with confidence pick that lower  
13 number.

14           I think that you could easily pick a number at 20  
15 percent with great deal of confidence. That is  
16 important because the actual temperatures in stream,  
17 that is a fairly big difference between what you might  
18 arrive at and a 10 percent level or 20 percent level in  
19 growth reduction. It is somewhere between -- the  
20 difference between 60 and 66 degrees. Now that is  
21 important because many streams and rivers in this region  
22 are probably not necessarily going to be able to achieve  
23 that temperature naturally, and trying to it is going to  
24 be hard enough in other cases.

25           I just wanted to point out that the selection of

1 that upper value for that impairment level is actually  
2 fairly arbitrary and would make a difference. There is  
3 some -- it is really a policy choice. I wanted to also  
4 make a caveat that physical conditions of channels is  
5 very -- it is going to be trying to tie some type of  
6 criteria to position in watershed, probably makes some  
7 sense, although it is difficult to do. But when you are  
8 trying to remove streams from the list once they are on  
9 there is going to be fairly crucial because it is going  
10 to be important to try to achieve that.

11 CHAIRMAN BAGGETT: Thank you.

12 Jim Brannif followed by Bernie Bush. That is the  
13 order.

14 MR. BUSH: Jim Brannif stepped out. He had to  
15 take a phone call. We move ahead. I don't know if he  
16 will be back or not.

17 Thank you, Mr. Chairman, Board Members. Bernie  
18 Bush, and I want to make some comment on the temperature  
19 issue specifically. And I represent Simpson Resource  
20 Company.

21 First, I would like -- regarding Craig Wilson's  
22 remarks earlier about industry comments being very late,  
23 I would say I will apologize for our preoccupation with  
24 the silviculture waiver issue late last year. The North  
25 Coast Board hearing on that issue was December 10th.

1 The deadline for written comment here on this issue was  
2 December 6. But importantly I think we have been  
3 involved in this issue and I have testified as early as  
4 2001 when it was first brought in front of the Regional  
5 Board, North Coast Regional Board.

6 I would point out that the Regional Board as of a  
7 meeting early in 2001 is on record not to list as  
8 temperature impaired, rather a watch list or a  
9 monitoring list or whatever is appropriate at this  
10 point. Your workshop in June of last year, a number of  
11 us testified --

12 CHAIRMAN BAGGETT: In May we had one here.

13 MR. BUSH: -- or in May. It was the middle of  
14 summer sometime. And once again, I believe there was a  
15 recommendation at that point not to list, that again  
16 either a watch list or monitoring list would be  
17 appropriate for --

18 CHAIRMAN BAGGETT: We were provided with a  
19 substantial amount of data showing the temperature  
20 impairments were above the criteria as set. Now there  
21 may be a debate about the criteria, but we were  
22 certainly presented with a significant volume of  
23 facts.

24 MR. BUSH: And that is exactly our point.

25 CHAIRMAN BAGGETT: You were here and saw it.

1           MR. BUSH: I refer you to Dr. Sullivan's  
2 comments and remarks which clearly state that the 14.8  
3 number, which is used as a threshold to determine  
4 listing, is really a better descriptive measure for an  
5 optimal condition. In other words, that is the perfect  
6 world for a fish. That is the perfect world, 14.8.  
7 That, in fact, it is not a threshold over which a  
8 listing of impairment is obligated. It is the perfect  
9 world. I can't make that -- I want to state that,  
10 emphasize that as clearly as possible.

11           There are other numbers, and she ran through the  
12 list of numbers and that is where I think, quite  
13 honestly, a monitoring list will be important, to better  
14 be able to determine various segments and where they  
15 are. To illustrate I thought I would do a comparison in  
16 our area. We so often hear about the conditions in  
17 managed watersheds versus pristine watersheds. So I had  
18 our fisheries biologist, and they checked data. Over  
19 the last five years in Prairie Creek, which is in  
20 Redwood National State Park, the, quote-unquote,  
21 pristine redwood old-growth stream on the North Coast.  
22 And going back to again 1998, four out of those five  
23 years the seven day moving average temperature exceeded  
24 the 14.8 degree threshold. I just use that as an  
25 illustration.

1           Using the methodology as per the staff proposal at  
2 this point, the pristine would have to be listed as  
3 impaired, and I don't think that is intended here, I  
4 really don't. Ground temperature. Temperature is a  
5 terribly complex issue and as Dr. Sullivan pointed out.  
6 And groundwater temperatures in our area of the region  
7 are just under 13 degrees centigrade. That is less than  
8 two degrees from this 14.8.

9           I would suggest -- it suggests to me somewhat that  
10 the only way we'll ever see MWATs at 14.8 is if we are  
11 still around during the next glacial incursion. That is  
12 when water temperatures would come close to 14.8 degrees  
13 on average.

14           I think important, most importantly, given the  
15 regulation that follows a listing and the social, legal  
16 and economic impacts to a landowner and given  
17 Dr. Sullivan's remarks about the appropriateness of  
18 using the optimal level as a threshold to define  
19 impairment, I want to urge you to set aside the listings  
20 of these water bodies, at least the ones in the northern  
21 part of the region that I am most familiar with, but  
22 quite honestly the 14.8 was used throughout the region.  
23 I would set aside them all at this point and include  
24 them on a watch or monitoring list as per the North  
25 Coast Regional Board recommendation last year and again

1 this past summer.

2 We have, I think specifically with the -- the neat  
3 thing about a monitoring list for temperature is we have  
4 thousands of monitoring locations throughout large  
5 portions of the state. We can address the temperature  
6 issue in segments, and I think I have heard and I know  
7 you are very supportive, Chairman Baggett, of monitoring  
8 and science driving these issues. And we have got a lot  
9 going in that regard.

10 Thank you very much.

11 CHAIRMAN BAGGETT: Thank you.

12 Peter Rebar.

13 MR. REBAR: Chairman Baggett, Members of  
14 Board, my name is Peter Rebar. I am representing  
15 Campbell Kimberland Management. We manage property for  
16 Hawthorne Timber Company in the Fort Bragg area. I just  
17 wanted to say that I totally support both Kathleen  
18 Sullivan and Bernie's discussion about the threshold  
19 issue. So I am not going to belabor that.

20 We did submit a letter dated June 14th, 2002, in  
21 response to a solicitation for water quality data and  
22 information. In that letter we basically outlined our  
23 support for the Regional Board's decision to put these  
24 water bodies on a watch list. And so today I would once  
25 more support that method of putting it on a, I guess a

1 monitoring list is what the phrase is currently, so we  
2 would urge you to do that.

3 Because this whole issue of water monitoring first  
4 came before the Regional Board we knew it was going to  
5 be a very important issue for us. And so we  
6 commissioned a report that is just about to its final  
7 draft stage and prepared by a consulting -- an  
8 environmental consulting firm. The title of this white  
9 paper is Stream Temperature Indices, Thresholds and  
10 Standards Used to Protect Coho Salmon Habitat, a Review.

11 And just to give you a few highlights of some of  
12 the conclusions is that -- first conclusion is there is  
13 a lot more study needed, and these have to be focused  
14 field studies that control, for example, juvenile  
15 feeding, stream size and habitat characteristics to  
16 assess the degree to which application of a MWAT  
17 threshold can protect juvenile coho salmon from  
18 temperatures that cause direct mortality or immigration.  
19 There is some discussion to further evaluate the  
20 available data, to analyze those relationships between  
21 MWAT and long-term sublethal temperature patterns in  
22 Northern California and to compare those temperature  
23 characteristics in Washington versus the Northern  
24 California streams.

25 Also, there is an issue of a lot to do with the

1 physiology, and a lot of it has to do with what is  
2 termed bioenergetic ecology. Some of the  
3 recommendations that result out of this issue is  
4 determine the bioenergetic ecology of juvenile coho in  
5 Northern California, including seasonal variations in  
6 food availability and seasonal growth patterns. And  
7 some of these subsidiary questions that might be  
8 considered and needs to be considered is the MWAT index  
9 related to summer growth of juvenile coho salmon in  
10 Northern California streams. So there is a lot of  
11 questions out there that we need to put some -- a lot of  
12 effort into.

13 As Mr. Bush stated, we have been monitoring for  
14 temperatures since 1993. And all our data has been  
15 available and a lot of it has been used for these  
16 determinations. And if you take the issue that Kate  
17 said and use some, what we believe is a more reasonable  
18 threshold, you will see that the exceedances are very  
19 low. So we urge you to put them to the monitoring  
20 lists, specifically Ten Mile River, Big River and the  
21 other coastal watersheds.

22 Thank you very much.

23 CHAIRMAN BAGGETT: Thank you.

24 Jim Ostruwski.

25 MR. OSTRUWSKI: Good afternoon, Chairman

1 Bagget and Members of the Board. I am Jim Ostruwski. I  
2 am the timberland manager for Timber Products Company,  
3 but today I am here as the Chairman of the Board for the  
4 Institute for Forest and Watershed Management. And we  
5 are an institute, a research cooperative institute  
6 through Humboldt State University Foundation dedicated  
7 to cooperative research for landowners or government  
8 agencies and the university system.

9 Part of the letter that was submitted by CFA was a  
10 copy of the report that our institute, which was  
11 formerly known as the Forest Science Projects, our  
12 report on a regional assessment of stream temperature  
13 across Northern California and the relationship to  
14 various landscape level and site-specific attributes.

15 CHAIRMAN BAGGETT: This is in the record?

16 MR. OSTRUWSKI: This was in the record, and I  
17 believe you said that you'd already seen that  
18 previously. And this was done or completed in year  
19 2000. It was an eight-year process of data collection  
20 of over 1000 temperature sites where continuous  
21 temperature monitoring all through the North Coast, from  
22 Fort Bragg, Mendocino, Sonoma County, all the way up  
23 through the Klamath River, junior river basins, up into  
24 Siskiyou County. So it was a huge effort to try to look  
25 at a large scale view of temperature and the potential

1 impacts of various both land management as well as  
2 natural variables that would affect temperature.

3 The data was collected by landowners, by resource  
4 conservation districts, government agencies, school  
5 systems, U.S. Forest Service, Park Service, Fish and  
6 Game and many others contributed to the data set. So it  
7 is one of the most extensive data sets in the country  
8 and is recognized as quite a report as far as the amount  
9 of data and the regional scope of it.

10 Some of the conclusions or observations that the  
11 report made that I think are germane to this topic  
12 today, particularly in response to the listing, both the  
13 listing of temperature and that are important as regards  
14 to the threshold and whether or not those thresholds can  
15 ever be met by streams in our region. This is an  
16 important point. Because if we're shooting for a goal  
17 that is unachievable or never was achievable or never  
18 was achieved, then what are we doing here? We are  
19 setting ourselves up for failure.

20 One thing that -- essentially four things that I  
21 would like to point out or five things to point out from  
22 our report. It is in the record and I would hope that  
23 the staff did pay attention to these points, so I am  
24 going to reiterate them.

25 First of all, local ambient air temperature is the

1 air temperature that greatly influences stream water  
2 temperature by increasing in the interior or decreasing  
3 in the coastal fog belt water temperatures.

4 Another point is that stream water temperatures  
5 increase with increasing distance from the watershed  
6 divide. In other words, you can't have a single  
7 temperature for a whole stream. You just naturally  
8 change.

9 CHAIRMAN BAGGETT: Let me interrupt for a  
10 minute. The challenge here is not the data on  
11 temperatures. All the data is in there. That doesn't  
12 seem to be a controversy here. It is what the 14.8  
13 centigrade number set by the Regional Board in their  
14 Basin Plan is -- or whatever that number, the number  
15 seems to be the issue that we are using.

16 MR. C.J. WILSON: This study is a good one. I  
17 predict we would agree with your five points on this  
18 study.

19 CHAIRMAN BAGGETT: It sounds like -- I am  
20 trying to cut through what is the real issue. It  
21 doesn't seem like it is the temperature numbers on the  
22 monitoring data.

23 MR. C.J. WILSON: Temperature is extremely  
24 variable. It depends on all the factors that are  
25 presented in this report. I really appreciate the

1 presentation by Dr. Sullivan. That study from 1990 was  
2 a fabulous effort, and she very carefully lays out the  
3 risk assessment process that they went through. Some of  
4 that process you have to make choices on how to use  
5 these data. You have to decide if it is 10 percent or  
6 12 percent growth or 10 or 20. The questions go on.  
7 You have to make a choice. The Regional Board picked  
8 that report up. It is accepted by agencies like NMFS,  
9 the Regional Board. We think it is a pretty good  
10 effort.

11 The Regional Board did just -- just did not use  
12 14.8. They used these higher thresholds as well. And  
13 we reported in our staff report like for the Gualala  
14 River 15 locations were higher than the 24-degree value,  
15 which was a lethal concentration. That is a big deal to  
16 me. Yes, they mentioned the 14.8 in here, but they  
17 mention a variety of factors. These are good listings  
18 and this is an important problem on the North Coast.

19 I want to turn to David Leland from the Regional  
20 Board staff --

21 CHAIRMAN BAGGETT: Let's finish the comments  
22 from the forestry folks. I am trying to understand. I  
23 want to narrow it down. It sounds like the issue -- all  
24 I am trying to get at right now is the issue is what  
25 number are we using, not the amount of data out there

1 and not whether this data that Coast Action gives us or  
2 your data, the data's showing -- telling us your number.  
3 So we aren't arguing data or monitoring collection. We  
4 are arguing what number is the appropriate number, and  
5 that number was set by the Regional Board. That is all  
6 I want to clarify.

7 MR. C.J. WILSON: That number was used as a  
8 guideline to evaluate whether there are impacts on  
9 beneficial uses.

10 CHAIRMAN BAGGETT: Who set the number?

11 MR. C.J. WILSON: The Regional Board staff  
12 used that number, selected that. It wasn't adopted as a  
13 water quality objective or standard.

14 CHAIRMAN BAGGETT: The Board didn't establish  
15 it like they do a Basin Plan or anything else?

16 MR. C.J. WILSON: That is correct.

17 MR. OSTRUWSKI: Thank you.

18 Another -- a point with this temperature is that  
19 granted we found high temperatures, a wide variety of  
20 temperatures. In many cases these temperatures would be  
21 optimum; many times that could be near lethal or  
22 suboptimum. But the idea is that you are not going to  
23 find a single temperature throughout a stream, and many  
24 cases the temperatures are not related to land  
25 management activities. You get down to unshaded

1 estuaries area below elevation.

2 CHAIRMAN BAGGETT: That is what is  
3 incorporated into -- you will figure all that out once  
4 you look at the watershed, what sections, what reaches.

5 MR. OSTRUWSKI: True, but once it is listed it  
6 is saying it is impaired throughout its length, and that  
7 even when you have regions that are not at any kind of  
8 impairment level, it implies that that whole watershed  
9 is impaired.

10 So I guess in summary, and he is right, and many  
11 places historically, another point, as we look at  
12 historical data many places where temperatures  
13 historically were over 20 degrees. So in summary I will  
14 just to finish up here, there is a wide variety and no  
15 single stream temperature is going to be achievable and  
16 it is not a realistic goal to try to set in a TMDL.  
17 They have to try to develop a TMDL to meet that. We are  
18 going to be running around in circles. We urge you to  
19 really look at this report again and take it for  
20 information, a lot of science, a lot of monitoring over  
21 ten years across a wide area and consider whether or not  
22 it is appropriate at this time to delist.

23 Thank you very much.

24 CHAIRMAN BAGGETT: Dave Bischell, the last  
25 card.

1           MR. BISCHEL: Thank you, Mr. Chairman, Members  
2 of the Board. I know that you have had a long day and a  
3 long year and clearly we have had a lot of issues.

4           CHAIRMAN BAGGETT: We are just starting.

5           MR. BISCHEL: On this particular issue -- I  
6 guess a long two years. I think there is not a question  
7 here about the data. We have voluntarily -- the 1,090  
8 stations continuous monitoring for nine years has been  
9 data that has been collected and funded by individual  
10 landowners across the north state. Nor do we, I don't  
11 believe, have a problem with the evaluation by CDF in  
12 terms of hill slope monitoring and taking a look at hill  
13 slope activities and the relationship there, because I  
14 think one of the issues we are talking about is the  
15 relationship of management here as well. Under that  
16 particular analysis, 300 timber harvest plans  
17 statistically a stratified random sample identified the  
18 condition of our watersheds and canopies which were in  
19 extremely good condition, over 80 percent canopy closure  
20 in those areas post harvest.

21           I don't think we are here arguing about that  
22 particular issue. If you take a look at Dr. Sullivan's  
23 study, she has identified a range, a general range in  
24 which coho thrive. That range is something between 14.3  
25 and 18 degrees. And then ranges where you start having

1 systemic and other type impacts on the species outside  
2 of that.

3         When you take a look at the decision to list as  
4 water quality impaired, I think the key difference here  
5 is whether or not you pick the middle of that range and  
6 identify it as a threshold of not to exceed which then  
7 defines impairment, or you identify actually the range  
8 of that species in terms of its optimum growth and its  
9 optimum living capability and look at the overwhelming  
10 amount of data that we have. There are points in the  
11 lower watersheds most specifically that exceed that  
12 particular range. But the vast majority of the data, if  
13 you take a look at the stream data for those areas where  
14 we are managing, those stream segments fall within that  
15 14.3 to 18 or 19 degree range. As a result, I think  
16 that the underlying issue of establishing a guideline  
17 which is not a part -- I think that was an important  
18 part here. It is not a part of the water quality  
19 objective as defined by the North Coast Board. That is  
20 a narrative standard that identifies a board described  
21 objective with not too exceed five-degree limitation on  
22 variability from background.

23         The North Coast Board, after taking staff's input,  
24 after taking input from us, the research that was done  
25 and the underlying data, Dr. Sullivan's data, made a

1 determination to recommend to you that these streams be  
2 put on the monitoring list. We certainly agree with  
3 that decision and would ask that you put these streams  
4 on a monitoring list and that, in the process of doing  
5 so, you take a look at this standard that is out there  
6 and recognize what may or may not be more appropriate in  
7 terms of a not-to-exceed threshold from an impairment  
8 perspective.

9 I also would like to point out that even to the  
10 north in Washington their standards are substantially  
11 higher for targets and BMPs in those states.

12 Thank you.

13 CHAIRMAN BAGGETT: Thank you.

14 At this point we don't need to close the public  
15 comment. Just it is closed. Let's figure out what we  
16 are going to do.

17 On the last issue is a tough one. There is no  
18 question there are problems up there with salmon. I  
19 think we made the decision based on the volumes of data  
20 and applying the standards which I now realize the staff  
21 set on the North Coast. If you take that standard and  
22 apply it, you can look at these results. But, I guess,  
23 it would be if we could list -- I guess the direction to  
24 the Regional Boards themselves to evaluate Dr.  
25 Sullivan's study and staff's criteria and set some more

1 specific criteria because, like I said, everybody  
2 realizes we will be back here in the not too distant  
3 future. Data doesn't sound like it's a problem; it's  
4 how you apply it. And I think we've got a decision now.

5 MEMBER SILVA: Can you put on the monitoring  
6 list as recommended or would you want to list?

7 CHAIRMAN BAGGETT: Based on the current  
8 criteria, I think staff analyzed and if the evidence is  
9 there, then it should be listed, right, based on --

10 MEMBER CARLTON: May I ask a question of Craig  
11 and/or the Region 1 staff? The 14.8 criteria that has  
12 been used in this listing, did the determination of that  
13 number include consideration of the research done by Dr.  
14 Sullivan and the other report?

15 MR. C.J. WILSON: It was based on the study  
16 performed by Dr. Sullivan; it was based on that risk  
17 assessment. And please, the 14.8 was not the only value  
18 used. There were other values used, including this  
19 24-degree value which is quite high where lethality  
20 occurs. It is not just one number. It is not just the  
21 lowest number. It's highest numbers that are of the  
22 most concern.

23 David, may I turn to you.

24 CHAIRMAN BAGGETT: Just knowing some of the  
25 rivers up there, they do change radically from one upper

1 reach to the lower reach. So one part could be impaired  
2 and the other part not on the same watershed.

3 MR. LELAND: My name is David Leland. I am  
4 with the staff of the North Coast Regional Water Quality  
5 Control Regional Board. The first point is absolutely  
6 in terms of your last comment, Chairman Baggett. There  
7 is an enormous natural variability in these watersheds.  
8 And the Forest Science Report documents some of that.  
9 We are certainly not arguing that. The issue is whether  
10 there has been some impairment as a result of human  
11 activity on the landscape. That is the task that we had  
12 in front of us, was to sort that out.

13 And to reiterate what Craig said, we did look at a  
14 number of different thresholds. They were screening  
15 criteria is the way I would phrase them that we used as  
16 part of this analysis in order to understand what the  
17 data were telling us. They are not water quality  
18 objectives. They are not part of the Basin Plan. But  
19 they are a way for us to look at data.

20 We compiled a number of different studies and  
21 standards from the west coast, including standards that  
22 are used in Oregon and Washington, including studies  
23 done on the North Coast and including in the Mattole and  
24 on the Mendocino Coast as well as Dr. Sullivan's study.  
25 Put those all together in order to come up with the new

1 screening criteria that we used. So we really had a  
2 weight of evidence here. Dr. Sullivan's study was more  
3 comprehensive and more rigorous and more detailed than  
4 the others, so it may have seemed as if it got more  
5 emphasis in the report. We certainly thought it was a  
6 good piece of work. But there are other lines of  
7 evidence that support using similar types of screening  
8 criteria to look at the temperature data. So it is not  
9 based on one study or one number.

10 CHAIRMAN BAGGETT: It appears you haven't done  
11 every reach of every river. It likes some of the  
12 different reaches that are impaired.

13 MR. LELAND: There are a number of watersheds  
14 where we had enough data in particular subalterns that  
15 showed, based on screening criteria, that there was not  
16 an impairment, so we excluded those portions of that  
17 watershed. For example, the North Fork of the Gualala.  
18 There was a portion of the Ten Mile that were excluded  
19 on basis of that. So we were sensitive to this issue.  
20 We were -- when we had adequate data to do that, we were  
21 cutting out those portions that met those criteria.

22 I also wanted to say that the analysis of natural  
23 variability, the accounting of that natural variability,  
24 we think, is something that belongs in the TMDL  
25 analysis. It is very data intensive and requires a lot

1 of effort and can be sorted out quite effectively in  
2 that context. In fact, in order to test the listing  
3 approach we went back and looked at a data set from the  
4 Navarro River which had been previously listed for  
5 temperature which we had completed a technical TMDL.  
6 The results were the Navarro looked a lot like other  
7 watersheds that were proposed for listing and the  
8 analysis of the Navarro and the technical TMDL supported  
9 the original listing for Navarro and indicated  
10 temperature impairment, not everywhere in the watershed.  
11 Obviously the watershed is a very complex thing. There  
12 are someplaces that are going to meet and someplaces  
13 that won't. And to reinforce the screening criteria  
14 issue we don't think it makes any sense to propose a  
15 single value as a water quality objective for a  
16 watershed. Watersheds don't behave that way. They are  
17 variable. In the TMDLs we have used temperature ranges  
18 as a way to interpret the data as targets and  
19 indicators, not as water quality objectives. And what  
20 you see when you do that is that there is enormous  
21 variability within a watershed. But you also can see by  
22 going through that kind of analysis is that there is  
23 impairment and there is opportunity for substantial  
24 improvement in these watersheds with respect to  
25 temperature.

1                   CHAIRMAN BAGGETT: Do you have any other?

2                   I think it sounds like you will be sorting out the  
3 details of this throughout the process.

4                   You want to go down region by region to see if  
5 there is any -- the list I have, I can tell you, the  
6 trash TMDL issue is one unresolved issue. Monitoring of  
7 the --

8                   MEMBER SILVA: I'm still uncomfortable listing  
9 it, personally.

10                  CHAIRMAN BAGGETT: Orange County trash, 40  
11 miles of beaches.

12                  MEMBER KATZ: Sounds like a powerful  
13 message.

14                  CHAIRMAN BAGGETT: I have no problem putting  
15 it in the monitoring list. I just -- if we start  
16 listing every -- we didn't list the previous trash TMDL.  
17 We inherited those from our predecessors. L.A. beaches  
18 are already there. I mean, you will never be able to  
19 delist the trash TMDL, is one of the challenges I have.  
20 You will never have zero trash, anywhere, unless you  
21 have zero people.

22                  That is the only challenge I have if we start with  
23 listing every water body up and down the state. We can  
24 go down to the Sacramento and we can do -- where do we  
25 stop? What criteria? I'm not --

1           MEMBER KATZ: It's not a relative criteria in  
2 that sense. I understand the concern that maybe they  
3 all need it, but that doesn't mean that the criteria --  
4 lower the standard for something like that. That they  
5 all meet it doesn't mean it is the wrong standard.

6           MEMBER CARLTON: Mr. Chairman, in light of the  
7 testimony we received today I do have some concerns and  
8 consideration in the Orange County case. In that I  
9 believe they -- first of all, the evidence for the  
10 decision to list was based on a single study. Albeit, a  
11 credible group conducted the study. Some questions  
12 about the nature of the trash that composed a lot of  
13 what was found there. And then the county having such a  
14 aggressive program is to me a real offsetting factor  
15 here.

16           So I can certainly be comfortable with changing the  
17 listing designation to monitoring list in light of the  
18 fact there is such an aggressive program and our listing  
19 decision is based on a single study. I think there are  
20 permit functions and it will give us more data.

21           CHAIRMAN BAGGETT: I think there is a  
22 consensus here. We will change Orange County to  
23 monitoring. And I think I will give everybody an  
24 opportunity to go back and have alternate studies.

25           Region 5, only comment, we dealt with the Delta

1 Mendota. The other one was Bill Jennings wanted some  
2 information on a line in the Delta. We should probably  
3 ask Region 5 if they can provide him whatever is this  
4 line he was asking for in that comment.

5 Region 6, we had one. Hawiee. We went through  
6 that whole issue before. And I think the real  
7 challenge, as I recall, was the beneficial -- Rec-1 and  
8 2 because you allow people to fish in your drinking  
9 water reservoir. If you didn't have fishing, it would  
10 change the whole dynamic. Maybe Michael or Craig, is my  
11 recollection correct since I was the one who was here?

12 MR. LEVY: There is Rec-1 beneficial uses.  
13 There is fishing beneficial uses. They are in the Basin  
14 Plan, so they are water quality standards.

15 CHAIRMAN BAGGETT: If you eliminated those  
16 beneficial uses?

17 MR. LEVY: Well, you have to go through the  
18 basin planning process.

19 CHAIRMAN BAGGETT: I understand.

20 MR. LEVY: The question which Ms. Conboy  
21 brings up is whether it is a water of the U.S. We are  
22 not going to know for some time what is a water of the  
23 U.S. and what is not. You don't need to make that  
24 decision now.

25 CHAIRMAN BAGGETT: I think we've already

1 determined we won't do that.

2 MR. LEVY: You put a little asterisk on the  
3 water saying you will determine that later.

4 CHAIRMAN BAGGETT: We've done that a couple  
5 times.

6 MR. C.J. WILSON: That is currently the  
7 recommendation.

8 CHAIRMAN BAGGETT: That is the recommendation  
9 and unless LADWP wants to come back and change their  
10 beneficial use, then you've got another challenge. But  
11 I don't even want to -- we have a beneficial use for  
12 Rec-1/Rec-2 in fishing which has a standard, and I just  
13 don't see any way around it as long as you've got that  
14 use there and you have a criteria which we have to meet  
15 and it is in conflict with DHS, and we let that one fall  
16 where it falls. That is my recommendation.

17 Anybody have any other thoughts?

18 Castro Cove. We once said we would come back to  
19 that one. Because we have money committed and we have a  
20 time schedule, but it was alleged that there really  
21 isn't a time schedule.

22 MR. C.J. WILSON: Here is the situation that  
23 we have. Chevron/Texaco has committed to cleaning up  
24 this toxic hot spot, this bad location with a lot of  
25 different chemicals. They committed \$16,000,000 to do

1 that. There is a remediation plan that they have  
2 developed with the Regional Board. There is one point  
3 that needs to be clarified, and that is where to store  
4 these or where to deposit these, the polluted sediments.  
5 That is the last thing that needs to be decided.

6 The Regional Board tells us they are going to issue  
7 that remediation, that cleanup and abatement order, I  
8 believe it is going to be, within a year.  
9 Chevron/Texaco says they will implement -- begin  
10 implementation of that order immediately.

11 MEMBER KATZ: They won't contest the plan no  
12 matter what it is?

13 MR. C.J. WILSON: They are on record saying  
14 that. I can't speak for them, of course.

15 CHAIRMAN BAGGETT: What is on the agenda?

16 MR. C.J. WILSON: That I don't -- I don't have  
17 it. I don't think they have it scheduled for the  
18 agenda.

19 MEMBER KATZ: People helping people. Trust  
20 us. If we are going to issue the order within a year,  
21 and if it's challenged, then it would be at least  
22 another year after that. We are going to revisit it in  
23 two, right?

24 MR. C.J. WILSON: Fourteen months.

25 CHAIRMAN BAGGETT: So we put it on the

1 monitoring.

2 MEMBER KATZ: Monitor or list?

3 CHAIRMAN BAGGETT: List, low priority.

4 MR. C.J. WILSON: That is where we had it.

5 CHAIRMAN BAGGETT: A representation was made  
6 when I did the hearing last spring that there was, in  
7 fact, a time schedule and money committed. If there, in  
8 fact, is not a time schedule, just sort of a letter  
9 saying we will do this and nothing happened since last  
10 June --

11 MEMBER KATZ: What is a time schedule? Is it  
12 a ten-year schedule?

13 CHAIRMAN BAGGETT: It's not a time schedule by  
14 the Regional Board, correct? It is not enforceable time  
15 schedule?

16 MR. C.J. WILSON: That is correct.

17 CHAIRMAN BAGGETT: I would say let's just list  
18 it. That is not the bargain and what was represented to  
19 this Board, that there was a clear time schedule with  
20 money set aside.

21 MEMBER CARLTON: I would suggest list it with  
22 a low priority. It doesn't enforce any year term  
23 objection on the listing.

24 CHAIRMAN BAGGETT: They can come back with a  
25 time schedule.

1 MEMBER KATZ: Enforceable time schedule.

2 CHAIRMAN BAGGETT: Any other ones that anyone  
3 else had?

4 MEMBER SILVA: L.A., the big one.

5 CHAIRMAN BAGGETT: I don't know if we are  
6 going to resolve this one now. My other option would be  
7 if Region 9, EPA -- Dave's gone. That's too bad. They  
8 like to add to our list. Likewise, seems to me they  
9 should be glad to delist from our recommendation saying,  
10 look, you didn't meet the criteria and based on  
11 information provided you --

12 MR. C.J. WILSON: We have pulled all the  
13 letters that were sent to us on these water bodies by  
14 L.A. County Department of Public Works. We have gone  
15 through the Regional Board's fact sheet to us. We have  
16 the documents that were in the record. And what we have  
17 in the record is the L.A. County Department of Public  
18 Works 1994 to 2000 monitoring report. I talked to T.J.  
19 Kim, and I will let him speak for himself. What he told  
20 me was they have never attached these data, these  
21 newdata to anything they have sent to us.

22 CHAIRMAN BAGGETT: Yet it is all in the file.  
23 That is one of the problems with this process. They are  
24 in the file of the Regional Board because they are  
25 required to provide this information. But they don't

1 know to put it in this file.

2 MR. C.J. WILSON: I don't have access to any  
3 of that information.

4 CHAIRMAN BAGGETT: I know that. I'm just  
5 talking about a pragmatic -- I can understand how one  
6 could get confused out there. Both sides, the  
7 environmental side and the discharger side. We're  
8 confused. I'm just trying to make sure. Next time  
9 around so we don't have a choice based on that to  
10 continue with the way it is. I guess we can put a  
11 footnote. If, in fact, this information is in the  
12 record, they can provide it to Region 9 EPA, let them  
13 make a determination of their own, delist it. They can  
14 do that. That is in their purview.

15 MR. BISHOP: Be aware that if we start doing  
16 the TMDLs for the L.A.-San Gabriel River we are not  
17 going to move forward with the new data in the last few  
18 years, shows that there is delistable. We just make  
19 that recommendation to the TMDL and move on. We don't  
20 need the work.

21 CHAIRMAN BAGGETT: As long as there is a  
22 discussion between the County and your staff.

23 North Coast, temperature issue. I think it sounds  
24 like -- I would be more comfortable if I knew the  
25 Regional Board was actually involved. Normally, do not

1 Regional Boards set these criteria, North Coast? Most  
2 criteria are set in a Basin Plan or by some action of  
3 the Board, itself?

4 This is timber, nothing is quite normal.

5 MR. C.J. WILSON: In this example, in this  
6 situation the Regional Board is interpreting their  
7 narrative water quality or the staff is. They used the  
8 Sullivan study, plus the other things that David talked  
9 about.

10 CHAIRMAN BAGGETT: We could ask the Regional  
11 Board to go back and actually adopt numeric standards,  
12 if you want it. In the meantime we only have the  
13 interpretation of the narrative. We can ask them to  
14 examine whether numeric standards are appropriate. It  
15 sounds like they might be, to make it real clear in two  
16 years whether sections are listed or delisted. If you  
17 have clear standards then we have something we can talk  
18 about. Floating standards.

19 MS. ETTER: Can I --

20 CHAIRMAN BAGGETT: I know you came a long way.  
21 If it is real brief. And for the next round we will  
22 make sure staff has that new report and that will be  
23 included. We aren't going to make any changes in the  
24 recommendations today and opening the record for more  
25 data won't help us in this listing that we are going to

1 finish today. But you certainly will put that -- I  
2 guess preload staff for the next record which we will be  
3 starting shortly. You will be assured it is in there,  
4 so when we come around to revisit this issue. So  
5 nothing for Mattole from where you are. We didn't do  
6 more to you, how's that.

7 Anything else?

8 MEMBER KATZ: I will move all except Region 5.  
9 I will move all of the regions except Region 5 as  
10 modified by the Chair.

11 MEMBER SILVA: Second.

12 CHAIRMAN BAGGETT: Motion to second.

13 All in favor.

14 Motion carries unanimously.

15 On Region 5?

16 MEMBER KATZ: I move Region 5.

17 MEMBER SILVA: Second.

18 CHAIRMAN BAGGETT: All in favor.

19 Three ayes and Gary abstained.

20 Any other business to come before the Board?

21 Consent calendar, fees and regs.

22 MEMBER KATZ: Move.

23 CHAIRMAN BAGGETT: Is there a second?

24 MEMBER SILVA: Second.

25 CHAIRMAN BAGGETT: All in favor.

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Motion carries on the consent calendar and what else, the fees. We just adopted them.

Is there anything else?

If not, Craig and all your staff, thanks again.

(Board adjourned at 5:15 p.m.)

---oOo---



1 been told by the Regional Board staff, is covered by the  
2 L.A. River TMDL. And their intention is to address the  
3 problems with trash in Compton Creek under that TMDL.  
4 So I don't recommend any additions to the TMDLs based on  
5 this letter.

6 We received a letter from Heal the Bay. Many of  
7 the comments were repeated from previous correspondence.  
8 One portion of the letter is new, and that is related to  
9 our review of the bacterial data. I've been working  
10 with a team of scientists from SCCWRP, public health  
11 departments in Southern California, Heal the Bay,  
12 Regional Boards on developing a proposal to you for this  
13 policy that is coming up soon. That effort was going so  
14 well, we thought it was appropriate to use the concepts  
15 that were coming out of that. There are disagreements  
16 over those concepts.

17 Factually, I presented what we did in the proposal  
18 to that group. There were no complaints to me about  
19 that. We moved forward with reevaluating those data.  
20 And so I feel very confident that we have done an  
21 adequate job on that. There's been no other comments  
22 from the Regional Boards or public health people about  
23 how we are not doing that appropriately. There is  
24 definitely some disagreements about the policy direction  
25 and the stringency of this, and we need to face those.